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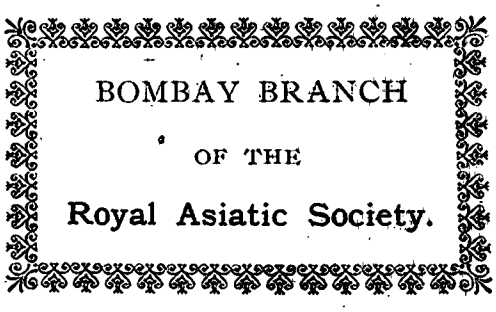

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ADDENDUM TO VOLUME I, GENERAL ACTS.

PAGE 167, FOOTNOTE 4.—*Add* :—

"This section is to be read as if it referred to parts of Bengal situated anywhere outside Calcutta, *see* the Indian Lunatic Asylums (Amendment) Act, 1909 (Ben. Act I of 1909), Ben. Code."

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GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

THE

UNREPEALED GENERAL ACTS

OF

THE GOVERNOR GENERAL IN COUNCIL:

WITH CHRONOLOGICAL TABLE AND INDEX.

From 1868 to 1878, both inclusive.

78662

VOL. II.

FOURTH EDITION.

N. C-13

CALCUTTA
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1909.

Price seven rupees.
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PREFACE.

THE second volume of the General Acts (fourth edition) has been compiled generally on the same lines as the first.

2. With reference to the foot-notes as to the extension or application by notification of Acts, it should be borne in mind that, where an Act has been so extended or applied, it is to be taken as having been extended or applied as textually amended by subsequent legislation (if any) up to the date of the notification. The Acts included in this Volume are printed as amended up to the 31st December 1908.

S. C. BANERJEE,
Legal Assistant, Legislative Department of the Government of India.

CALCUTTA;
The 15th January 1909.

LIST OF ABBREVIATIONS USED.

Aj. Code	. . . .	For Ajmere Code.
Bal. Code	. . . .	„ Baluchistan Code.
Ben. Code	. . . .	„ Bengal Code.
Bom. Code	. . . .	„ Bombay Code.
Bur. Code	. . . .	„ Burma Code.
C. P. Code	. . . .	„ Central Provinces Code.
E. B. and A. Code	. . . .	„ Eastern Bengal and Assam Code.
Mad. Code	. . . .	„ Madras Code.
P. and N.-W. Code	. . . .	„ Punjab and North-West Code.
U. P. Code	. . . .	„ United Provinces Code.
Coll. Stat.	. . . .	„ Collection of Statutes relating to India.
Gen. R. and O.	. . . .	„ General Statutory Rules and Orders.
Ben. R. and O.	. . . .	„ Bengal List of Local Statutory Rules and Orders.
Bom. R. and O.	. . . .	„ Bombay List of Local Rules and Orders.
C. P. R. and O.	. . . .	„ Central Provinces List of Local Rules and Orders.
E. B. and A. R. and O.	. .	„ Eastern Bengal and Assam List of Local Rules and Orders.
Mad. R. and O.	. . . .	„ Madras List of Local Rules and Orders.
Punj. R. and O.	. . . .	„ Punjab List of Local Rules and Orders.
U. P. R. and O.	. . . .	„ United Provinces List of Local Rules and Orders.
Bur. R. M.	. . . .	„ Burma Rules Manual.
Brit. Enact., N. S. (Mad. and My.)		„ British Enactments in force in Native States (Southern India, Madras and Mysore) Volume.
„ „ „ (Hyd.)	. .	„ British Enactments in force in Native States (Southern India, Hyderabad) Volume.
„ „ „ (N. I.)	. .	„ British Enactments in force in Native States (Northern India) Volume.
„ „ „ (W. I.)	. .	„ British Enactments in force in Native States (Western India) Volume.
„ „ „ (C. I.)	. .	„ British Enactments in force in Native States (Central India) Volume.
„ „ „ (Raj.)	. .	„ British Enactments in force in Native States (Rajputana) Volume.

CHRONOLOGICAL TABLE OF THE UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL, 1868—78.

* * * With respect to the entries in the fourth column regarding repeals, it may be noted:—

(*a*) partial repeals covered by later partial repeals are not noted;
(*b*) where an Act has been locally repealed and afterwards repealed by an Act whose operation is unrestricted, the later repealing Act has alone been noted;
(*c*) local repeals covered by later local repeals are not noted.

The references to pages in the fifth column are to pages of this volume.

(1) Acts which have been wholly repealed, and (2) Acts which apply to the Straits Settlements only, and are therefore not in force within the present limits of British India, are not included in these tables.

1	2	3	4	5
Year.	No.	Short title.	Whether repealed or otherwise affected by legislation.	Where published.
1869	I	The Oudh Estates Act, 1869.	.....	U. P. Code.
	IV	The Indian Divorce Act	Rep. in part, Act VII of 1870; Act XII of 1873. Rep. in part (in Punjab), Act XVIII of 1884. (in Central Provinces) Act IV of 1901. Amended, Act XI of 1889[1], s. 97. Act VI of 1900. Rep. in part, Act I of 1901.	p. [illegible].
	V	The Indian Articles of War.	Rep. in part and amended, Act XII of 1894. Amended, Act XII of 1891. Act I of 1900. IX of 1901. XIII of 1904. V of 1905.	p. 33.
	XIII	Procedure of High Court, N. W. Provinces.	.....	U. P. Code.
	XIV	The Bombay Civil Courts Act, 1869.	.....	Bom. Code.

N.B.—For complete Chronological List of all the Acts of the Governor General, in Council, whether repealed or unrepealed, *see* Wigley's Chronological Tables and Index of the Indian Statutes, Vol. I.

[1] Rep. by Act VI of 1900.

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL—*contd.*

1	2	3	4	5
Year.	No.	Short title.	Whether repealed or otherwise affected by legislation.	Where published.
1869	XX	The Indian Volunteers Act, 1869.	Rep. in part, Act XIV of 1870; Act IX of 1871; Act XVI of 1874. Amended, Act XII of 1891; Act X of 1896.	p. 88.
1870	V	The Unclaimed Deposits Act, 1870.	Rep. in part, Act II of 1874; Act XVI of 1874.	p. 97.
	VII	The Court-fees Act, 1870	Rep. in part, Act XIV of 1870; Act VIII of 1871; Act XIII of 1889; Act VIII of 1890. Rep. in part (in Punjab), Act XVII of 1887. Rep. in part and Amended, Act XX of 1870; Act VI of 1889, s. 18; Act XII of 1891; Act V of 1908. Amended, Act XV of 1872, s. 2; Act XIII of 1875, s. 6; Act VII of 1889, s. 13; Act XI of 1899, ss. 2, 3; Act X of 1901; Act VI of 1905; (in Punjab), Act XVIII of 1884, s. 71 (as amended by Act XXV of 1899, s. 6, and by Act IX of 1900);	p. 98.

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL—*contd.*

1	2	3	4	5
Year.	No.	Short title.	Whether repealed or otherwise affected by legislation.	Where published.
1870	VII	The Court-fees Act, 1870	Amended (in Lower Burma), Act XI of 1889, s. 84; Act VI of 1900, s. 47; (in Upper Burma), Reg. I of 1896, s. 36; Reg. V of 1903; (in Bengal), Ben. Act III of 1898, s. 7.	
	VIII	The Female Infanticide Prevention Act, 1870.	Amended in Bombay Presidency, and declared to extend to that Presidency, Bom. Act III of 1897.	p. 147.
	XX	The Court-fees Act (1870) Amendment Act, 1870.	.....	p. 150.
	XXI	The Hindu Wills Act, 1870.	Rep. in part, Act XII of 1891. Rep. in part and amended, Act V of 1881, s. 154.	p. 150.
	XXIV	The Oudh Tálukdárs Relief Act.	.....	U. P. Code.
	XXVII	The Indian Penal Code Amendment Act, 1870.	Rep. in part, Act X of 1872. Rep. in part and amended, Act XII of 1891; Act IV of 1898. Virtually amended— Act VIII of 1882; Act X of 1886, ss. 21 (*l*) and 24 (*l*).	p. 153.
1871	I	The Cattle-trespass Act, 1871.	Amended, Act I of 1891. Supplemented, ss. 4 (*o*) and 260 (*l*) (*m*), Act V of 1898.	p. 156.
	IV	The Coroners Act, 1871 .	.....	Bom. Code. Ben. Code.
	V	The Prisoners Act, 1871	Rep. (except s. 15), Act III of 1900.	p. 169.
	XXI	Dera Dun	.....	U. P. Code.

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1	2	3	4	5
Year.	No.	Short tittle.	Whether repealed or otherwise affected by legislation.	Where published.
1871	XXII	The Bengal Chaukidari (Amendment) Act, 1871.	.....	P. and N. W. Code. U. P. Code. Aj. Code.
	XXIII	The Pensions Act, 1871	Rep. in part, Act XII of 1891. Amended (locally), Act XXI of 1886.	p. 169.
	XXVII	The Criminal Tribes Act, 1871.	Rep. in part, Act XVI of 1874; Act XII of 1876. Amended, and extended to Bengal, Act VII of 1876. Amended, and extension to other provinces authorised, Act II of 1897.	p. 175.
	XXXI	The Indian Weights and Measures of Capacity Act, 1871.	.....	p. 188.
1872	I	The Indian Evidence Act, 1872.	Rep. in part, 44 & 45 Vict., c. 58, s. 127. Act X of 1897. Amended, Act XVIII of 1872; Act III of 1887; Act III of 1891, ss. 1-8; Act V of 1899.	p. 192.
	III	The Special Marriage Act, 1872.	Rep. in part, Act XVI of 1874; Act XII of 1876. Amended, Act VI of 1886, s. 29.	p. 253.
	IV	The Punjab Laws Act, 1872.	.....	P. and N. W. Code.
	V	Jurisdiction over Sindh	.....	Bom. Code.
	IX	The Indian Contract Act, 1872.	Rep. in part, Act I of 1877; Rep. in part and amended, Act VI of 1899. Amended, Act IV of 1886; Act XII of 1891.	p. 262.

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1	2	3	4	5
Year.	No.	Short title.	Whether repealed or otherwise affected by legislation.	Where published.
1872	XV	The Indian Christian Marriage Act, 1872.	Rep. in part, Act XVI of 1874. Rep. in part and amended, Act XII of 1891. Amended, Act VI of 1886, s. 30; Act II of 1891; Act I of 1903.	p. 341.
	XVIII	The Indian Evidence Act Amendment Act.	Rep. in part, Act X of 1873; Act XVI of 1874; Act XII of 1876. s. 4 virt. amended, Act V of 1899, s. 3.	p. 378.
	XIX	The Indian Penal Code Amendment Act, 1872.	.....	p. 379.
	XX	Jurisdiction over Sindh (Amending Act, V of 1872).	.....	Bom. Code.
	XXII	The Act, X of 1859 Amendment Act, 1872.	Rep. (in the United Provinces) (except certain scheduled districts), Act XVIII of 1873; (in Central Provinces, Act IX of 1893).	Not republished.
1873	III	The Madras Civil Courts Act, 1873.	.....	Mad. Code.
	V	The Government Savings Banks Act, 1873.	Rep. in part, Act XII of 1873; Act XVI of 1874; Act XII of 1891.	p. 380.
	VIII	The Northern India Canal and Drainage Act, 1873.	.....	P. and N.-W. Code. U. P. Code. C. P. Code.
	X	The Indian Oaths Act, 1873.	Rep. in part, Act XII of 1873; Act XII of 1876; Act VI of 1900, s. 48.	p. 384.

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1	2	3	4	5
Year.	No.	Short title.	Whether repealed or otherwise affected by legislation.	Where published.
1873	XVI	The North-Western Provinces Village and Road Police Act, 1873.	.....	U. P. Code.
	XVII	The Nawab Nazim's Debt Act, 1873.	.....	Not republished.
1874	II	The Administrator General's Act, 1874.	Rep. in part, Act I of 1879. Act VI of 1900. Act V of 1902. Rep. in part and amended, Act IX of 1881. Amended, Act II of 1890, ss. 10-15; Act XII of 1891. Act VII of 1901.	p. 389.
	III	The Married Women's Property Act, 1874.	Rep. in part, Act XII of 1876; Act VI of 1888, s. 9; Act XII of 1891.	p. 420.
	IV	The Foreign Recruiting Act, 1874.	Rep. in part, Act XII of 1876.	p. 423.
	IX	The European Vagrancy Act, 1874.	Rep. in part, Act I of 1879. Amended, Act XII of 1891.	p. 425.
	XIV	The Scheduled Districts Act, 1874.	Rep. in part, Act XIX of 1879; Act XIV of 1881, s. 14; Act XXV of 1881; Act VIII of 1883; Act VII of 1885; Act XX of 1890, s. 8(1). Act VI of 1902; Reg. I of 1900. Rep. in part and amended, Act XII of 1891. Amended, Act II of 1893.	p. 440.

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1	2	3	4	5
Year.	No.	Short title.	Whether repealed or otherwise affected by legislation.	Where published.
1874	XV	The Laws Local Extent Act, 1874.	Rep. in part, Act VIII of 1875; Act XII of 1876; Act XVIII of 1877; Act VI of 1878; Act XI of 1878; Act XIX of 1879; Act XIV of 1881, s. 14; Act XXVI of 1881; Act X of 1882; Act VIII of 1883; Act VII of 1885; Act VIII of 1887; Act IX of 1887; Act VII of 1889; Act XIII of 1889; Act VIII of 1890; Act XX of 1890, s. 8 (*1*); Act IV of 1894. Act IX of 1894; Act XI of 1901, s. 3; Act I of 1903. Rep. in part and amended, Act XIV of 1881, s. 15; Act XII of 1891.	p. 456.
1875	V	The Unattested Sepoys Act, 1875.	.....	p. 476.
	IX	The Indian Majority Act, 1875.	Amended, Act VIII of 1890, s. 52.	p. 477.

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Year.	No.	Short title.	Whether repealed or otherwise affected by legislation.	Where published.
1875	XIII	The Probate and Administration Act, 1875.	Rep. in part, Act XII of 1891; Act VIII of 1903. Virtually rep. in part, Act VIII of 1890. Amended, Act II of 1877; Act VI of 1890, s. 47; Act VI of 1889, s. 8. Virt. am. Act X of 1901, s. 3.	p. 479.
	XV	The Punjab Laws Amendment Act, 1875.	.....	Aj. Code. P. and N.-W. Code.
	XVIII	The Indian Law Reports Act, 1875.	Rep. in part, Act XII of 1876.	p. 480.
	XX	The Central Provinces Laws Act, 1875.	.....	C. P. Code.
1876	II	The Burma Land and Revenue Act, 1876.	.....	Bur. Code.
	VI	The Chota Nagpur Incumbered Estates Act, 1876.	.....	Ben. Code.
	VII	The Criminal Tribes (Amendment) Act, 1876.	.....	p. 481.
	IX	The Native Coinage Act, 1876.	.....	p. 482.
	X	The Bombay Revenue Jurisdiction Act, 1876.	.....	Bom. Code.
	XI	The Presidency Banks Act, 1876.	Rep. in part and amended, Act V of 1879. Amended, Act XX of 1899. Act I of 1907.	p. 484.
	XIII	The Indian Merchant Seamen's Act, 1876.	Amended, Act XII of 1891.	p. 518.
	XV	The Bombay Municipal Debentures Act, 1876.	.....	Bom. Code.
	XVI	The Stage Carriages Act (1861) Amendment Act, 1876.	Rep. in part, Act I of 1898.	p. 521.

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1	2	3	4	5
Year.	No.	Short title.	Whether repealed or otherwise affected by legislation.	Where published.
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	XIX	The Dramatic Performances Act, 1876.	.....	p. 522.
	XX	The Bhaunagar Act, 1876.	.....	Bom. Code.
	XXII	The Indian Museum Act, 1876.	.....	Ben. Code.
1877	I	The Specific Relief Act, 1877.	Rep. in part, Act XII of 1891. Rep. in part (locally)— Act II of 1882; Act IV of 1882. S. 21: application restricted and amended in part, Act IX of 1899, ss. 3, 21.	p. 524.
	IV	The Presidency Magistrates (Court-fees) Act, 1877.	Rep. (except s. 57), Act X of 1882.	p. 556.
	IX	The Punjab Murderous Outrages Act, 1877.	.....	P. and N.-W. Code.
	XI	The Military Lunatics Act, 1877.	Rep. in part, Act XII of 1891. Act I of 1901. Act I of 1903. Rep. in part and amended, Act XIII of 1894.	p. 557.
	XIII	The Burma Embankment Act, 1877.	.....	Bur. Code.
	XIV	The Broach and Kaira Incumbered Estates Act, 1877.	.....	Bom. Code.
	XVI	Revenue Jurisdiction, Bombay (amending Act X of 1876).	.....	Bom. Code.
	XIX	[1]The Madras Civil Courts (Amendment) Act, 1877.	.....	Mad. Code.
1878	I	The Opium Act, 1878	Rep. in part, Act IV of 1894. Rep. in part and amended, Act XII of 1891.	p. 559.

[1] This short title was given by Act XI of 1901, s. 2.

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL—*concld.*

1	2	3	4	5
Year.	No.	Short title.	Whether repealed or otherwise affected by legislation.	Where published.
1878	VI	The Indian Treasure-trove Act, 1878.	Rep. in part, Act XII of 1891.	p. 568.
	VII	The Indian Forest Act, 1878.	Rep. in part (locally), Act VI of 1879. Rep. in part and amended, Act V of 1901. Amended, Act V of 1890, ss. 2-14; Act XII of 1891. Rep. (in Assam), Reg. VII of 1891.	p. 573.
	VIII	The Sea Customs Act, 1878.	Rep. in part, Act XVI of 1904. Amended, Act IX of 1885, ss. 5 & 6; Act II of 1887, ss. 1-4; Act IV of 1889, ss. 10 & 11. Act VIII of 1889, ss. 1 & 2; Act IX of 1891, s. 3; Act XII of 1891; Act VIII of 1894, s. 11. Supplemented, Act VIII of 1896. Application of s. 150 extended, Act XIII of 1890, s. 9. Applied with modifications, Act II of 1896.	p. 605.
	XI	The Indian Arms Act, 1878.	Rep. in part, Act XII of 1891.	p. 688.
	XII	The Punjab Laws Amendment Act, 1878.	.....	P. and N.-W. Code.
	XIV	Assimilation of Powers, N.-W. Provinces and Oudh.	.....	U. P. Code.
	XV	Husainabad Endowment	.....	Not republished.
	XVII	The Northern India Ferries Act, 1878.	.....	Aj. Code; C. P. Code; Coorg Code; E. B. and A. Code; P. and N.-W. Code; U. P. Code.

THE

UNREPEALED GENERAL ACTS

OF

THE GOVERNOR GENERAL IN COUNCIL.

THE INDIAN DIVORCE ACT.

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ACT No. IV OF 1869.[1]

[*26th February 1869.*]

An Act to amend the law relating to Divorce and Matrimonial Causes in India.

Preamble.

WHEREAS it is expedient to amend the law relating to the divorce of persons professing the Christian religion, and to confer upon certain Courts jurisdiction in matters matrimonial; It is hereby enacted as follows:—

I.—Preliminary.

Short title. Commencement of Act.

1. This Act may be called the Indian Divorce Act, and shall come into operation on the first day of April, 1869.

Extent of Act.

2. This Act shall extend to the whole of British India, and (so far only as regards British subjects within the dominions hereinafter mentioned) to the dominions of Princes and States in India in alliance with Her Majesty.

Extent of power to grant relief generally,

Nothing hereinafter contained shall authorize any Court to grant any relief under this Act, except in cases where the petitioner professes the Christian religion and resides in India at the time of presenting the petition,

and to make decrees of dissolution,

or to make decrees of dissolution of marriage except in the following cases:—(*a*) where the marriage shall have been solemnized in India; or (*b*) where the adultery, rape or unnatural crime complained of shall

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[1] For Statement of Objects and Reasons, *see* Calcutta Gazette, 1863, p. 173; for Report of Select Committee, *see* Gazette of India, 1869, p. 192; for Proceedings in Council, *see* Calcutta Gazette, 1862, Supplement, p. 463, *ibid*, 1863, Supplement, p. 43, and Gazette of India, 1869, Supplement, p. 291.

This Act extends to India the principal provisions of the Matrimonial Causes Act, 1857 (20 & 21 Vict., c. 85), as amended by the Matrimonial Causes Act, 1859 (22 & 23 Vict., c. 61), the Matrimonial Causes Act, 1860 (23 & 24 Vict., c. 144), and the Matrimonial Causes Act, 1866 (29 & 30 Vict., c. 32). It also embodies many rulings of Sir Cresswell Cresswell and Lord Penzance.

It has been declared in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (*1*) and Sched. I, printed, Bur. Code; in the Arakan Hill District, *see* Schedule to the Arakan Hill District Laws Regulation, 1874 (IX of 1874), Bur. Code; in Angul and the Khondmals, Schedule to the Angul District Regulation, 1894 (I of 1894), printed, Ben. Code; in the Santhál Parganas by s. 3 of the Santhál Parganas Settlement Regulation (III of 1872) as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (III of 1899), *ibid;* in British Baluchistan by the Baluchistan Laws Regulation, 1890 (I of 1890), Bal. Code.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, *infra*, to be in force in the following Scheduled Districts, namely:—

the Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum, *see* Gazette of India, 1881, Pt. I, p. 504;

(The District of Lohárdanga included at that time the present district of Palamau which was separated in 1894. The District of Lohárdaga is now called the Ranchi District—*see* Calcutta Gazette, 1899, Pt. I, p. 44.)

the Scheduled Districts in Ganjám and Vizagapatam, *see* Fort St. George Gazette, 1898, Pt. I, p. 666.

It has been extended, by notification under s. 5 of the same Act, to the North-Western Provinces Tarái, *see* Gazette of India, 1876, Pt. I, p. 505.

The Limitation Act does not apply to suits under this Act, *see* the Indian Limitation Act, 1908 (IX of 1908), s. 29 (*2*), printed, General Acts, Vol. VI.

have been committed in India; or (*c*) where the husband has, since the solemnization of the marriage, exchanged his profession of Christianity for the profession of some other form of religion;

or of nullity. or to make decrees of nullity of marriage except in cases where the marriage has been solemnized in India.

Interpretation-clause. **3.** In this Act, unless there be something repugnant in the subject or context,—

"High Court." (1) "High Court" means,—

in any Regulation province—the Court there established under the Act of the twenty-fourth and twenty-fifth of Victoria, chapter one hundred and four;[1]

in the territories for the time being subject to the government of the Lieutenant-Governor of the Punjab—the Chief Court of the Punjab;

[2][in Burma—[2] the Chief Court of Lower Burma:]

and in any other Non-Regulation province and in any place in the dominions of the Princes and States of India in alliance with Her Majesty—the High Court or Chief Court to whose original criminal jurisdiction the petitioner is for the time being subject, or would be subject if he or she were a European British subject of Her Majesty:

In the case of any petition under this Act, "High Court" [3] is that one of the aforesaid Courts within the local limits of whose ordinary appellate jurisdiction, or of whose jurisdiction under this Act, the husband and wife reside or last resided together:

"District Judge." (2) [4] "District Judge" means,—[5]

in the Regulation provinces—a Judge of a principal Civil Court of original jurisdiction;

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[1] The Indian High Courts Act, 1861, Coll. Stat., Vol. I.

[2] For the words "in British Burma—the High Court of Judicature at Fort William in Bengal," the words "in Burma—the Special Court constituted under the Lower Burma Courts Act, 1889," were substituted by s. 97 and the second schedule to the Lower Burma Courts Act, 1889 (XI of 1889), and for the words "the Special Court constituted under the Lower Burma Courts Act, 1899," the words "the Chief Court of Lower Burma" were substituted by section 47 and Sch. I of the Lower Burma Courts Act, 1900 (VI of 1900), which repealed Act XI of 1889.

[3] In the N. W. Frontier Province, the Chief Court of the Punjab is the High Court as regards proceedings under this Act, *see* the N. W. F. P. Law and Justice Regulation, 1901 (Regulation VII of 1901), s. 6 (*1*) (*c*), P. and N.-W. Code.

[4] Repealed in the Punjab and in the Central Provinces in so far as it defines "District Judge" in the Punjab and in the Central Provinces respectively to mean the "Commissioner of a Division," *see* section 2 of the Punjab Courts Act, 1884 (XVIII of 1884), P. and N.-W. Code, and section 8 of the Central Provinces Civil Courts Amendment Act, 1901 (IV of 1901), repealed by the Central Provinces Courts Act, 1904 (II of 1904), C. P. Code. In these two provinces the Divisional Court is for the purposes of this Act to be deemed to be the District Court for the Districts comprised in the Division, *see* Act XVIII of 1884, s. 23, cl. (*a*), and Act II of 1904, s. 13 (*1*), cl. (*d*).

[5] Under the powers conferred by s. 6 of the Scheduled Districts Act, 1874 (XIV of 1874), the powers of a "District Judge" were conferred on the Deputy Commissioner, Khási and Jaintiá Hills, the Gáro Hills District and the Nágá Hills, *see* p. 12 of the Assam Manual of Local Rules and Orders, Ed. 1893, and Assam Gazette, 1897, Pt. II, p. 591, and 1898, Pt. I, p. 741, respectively.

[1][in the Non-Regulation [2] provinces, other than Sindh and [1] Burma—a Commissioner of a Division [3]:
in Sindh—the Judicial Commissioner of that province;
in [1] Burma—a Judge of a Divisional Court;]
and in any place in the dominions of the Princes and States aforesaid—such officer [4] as the Governor General of India in Council shall from time to time appoint in this behalf by notification in the Gazette of India, and, in the absence of such officer, the High Court in the exercise of its original jurisdiction under this Act:

"District Court."

(3) [5] "District Court" means, in the case of any petition under this Act, the Court of the District Judge within the local limits of whose ordinary jurisdiction, or of whose jurisdiction under this Act, the husband and wife reside or last resided together:

"Court."

(4) "Court" means the High Court or the District Court, as the case may be:

"Minor children."

(5) "minor children" means, in the case of sons of Native fathers, boys who have not completed the age of sixteen years, and, in the case of daughters of Native fathers, girls who have not completed the age of thirteen years: in other cases it means unmarried children who have not completed the age of eighteen years:

"Incestuous adultery."

(6) "incestuous adultery" means committed by a husband with a woman with whom, if his wife were dead, he could not lawfully contract marriage by reason of her being within the prohibited degrees of consanguinity (whether natural or legal) or affinity:

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[1] This clause as originally enacted was as follows :—
"in the Non-Regulation provinces, other than British Burma and Sindh—a Commissioner of a Division";
"in Pegu—the Recorder of Rangoon;"
"in Arakan—the Recorder at Rangoon until a Recorder's Court is established at Akyab, and thenceforward the Recorder at Akyab;
"in the Tenasserim Provinces—the Recorder at Moulmein;
"in Sindh—the Judicial Commissioner in that Province,"
for the subsequent amendments, *see* s. 97 and the second schedule to the Lower Burma Courts Act, 1889 (XI of 1889), and s. 47 and the first schedule of the Lower Burma Courts Act, 1900 (VI of 1900); as to the operation of the repeal of the former Act by the latter, *see* s. 1 (*2*), Act VI of 1900.

[2] In the Santhál Parganas, the Commissioner has been declared to be the District Judge, and the High Court at Calcutta to be the High Court, for the purposes of the Act, *see* s. 15 (*3*) of the Santhál Parganas Justice Regulation, 1893 (V of 1893), Ben. Code.

[3] In Oudh, the Judicial Commissioner is, for the purposes of this Act, to be deemed the Commissioner of the Division, *see* s. 27 of the Oudh Civil Courts Act, 1879 (XIII of 1879), printed, U. P. Code.

[4] For notifications issued under the power conferred by this clause, *see* p. 43 of Brit. Enact. N. S. (W. I), Ed. 1895, and Gazette of India, 1893, Pt. I, p. 510, in respect of Kathiawar and the Nizam's Dominions respectively.

[5] In the Punjab and the N. W. F. Province the Divisional Court shall for the purposes of this Act be deemed to be the District Court for all districts comprised in the division, Punjab Courts Act, 1884 (XVIII of 1884), s. 23, proviso (*a*); N.-W. F. Province Law and Justice Regulation, 1901 (Regulation VII of 1901), s. 53, proviso (*a*), *see* P. and N.-W. Code.

"Bigamy with adultery."

(7) "bigamy with adultery" means adultery with the same woman with whom the bigamy was committed:

"Marriage with another woman."

(8) "marriage with another woman" means marriage of any person, being married, to any other person, during the life of the former wife, whether the second marriage shall have taken place within the dominions of Her Majesty or elsewhere:

"Desertion."

(9) "desertion" implies an abandonment against the wish of the person charging it: and

"Property."

(10) "property" includes, in the case of a wife, any property to which she is entitled for an estate in remainder or reversion, or as a trustee, executrix or administratrix; and the date of the death of the testator or intestate shall be deemed to be the time at which any such wife becomes entitled as executrix or administratrix.

II.—Jurisdiction.

Matrimonial jurisdiction of High Courts to be exercised subject to Act. Exception.

4. The jurisdiction now exercised by the High Courts in respect of divorce *a mensâ et toro*, and in all other causes, suits and matters matrimonial, shall be exercised by such Courts and by the District Courts subject to the provisions in this Act contained, and not otherwise: except so far as relates to the granting of marriage-licenses, which may be granted as if this Act had not been passed.

Enforcement of decrees or orders made heretofore by Supreme or High Court.

5. Any decree or order of the late Supreme Court of Judicature at Calcutta, Madras or Bombay sitting on the ecclesiastical side, or of any of the said High Courts sitting in the exercise of their matrimonial jurisdiction, respectively, in any cause or matter matrimonial, may be enforced and dealt with by the said High Courts, respectively, as hereinafter mentioned, in like manner as if such decree or order had been originally made under this Act by the Court so enforcing or dealing with the same.

Pending suits

6. All suits and proceedings in causes and matters matrimonial, which when this Act comes into operation are pending in any High Court, shall be dealt with and decided by such Court, so far as may be, as if they had been originally instituted therein under this Act.

Court to act on principles of English Divorce Court.

7. Subject to the provisions contained in this Act, the High Courts and District Courts shall, in all suits and proceedings hereunder, act and give relief on principles and rules which, in the opinion of the said Courts, are as nearly as may be conformable to the principles and rules on which the Court for Divorce and Matrimonial Causes in England for the time being acts and gives relief.

Extraordinary jurisdiction High Court

8. The High Court may, whenever it thinks fit, remove and try and determine as a Court of original jurisdiction any suit or proceeding

instituted under this Act in the Court of any District Judge within the limits of its jurisdiction under this Act.

The High Court may also withdraw any such suit or proceeding, and transfer it for trial or disposal to the Court of any other such District Judge. Power to transfer suits.

9. When any question of law or usage having the force of law arises at any point in the proceedings previous to the hearing of any suit under this Act by a District Court or at any subsequent stage of such suit, or in the execution of the decree therein or order thereon, Reference to High Court.

the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the case and refer it, with the Court's own opinion thereon, to the decision of the High Court.

If the question has arisen previous to or in the hearing, the District Court may either stay such proceedings, or proceed in the case pending such reference and pass a decree contingent upon the opinion of the High Court upon it.

If a decree or order has been made, its execution shall be stayed until the receipt of the order of the High Court upon such reference.

III.—Dissolution of Marriage.

10. Any husband may present a petition to the District Court or to the High Court, praying that his marriage may be dissolved on the ground that his wife has, since the solemnization thereof, been guilty of adultery. When husband may petition for dissolution.

Any wife may present a petition to the District Court or to the High Court, praying that her marriage may be dissolved on the ground that, since the solemnization thereof, her husband has exchanged his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman; When wife may petition for dissolution.

or has been guilty of incestuous adultery,

or of bigamy with adultery,

or of marriage with another woman with adultery,

or of rape, sodomy or bestiality,

or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce *a mensâ et toro*,

or of adultery coupled with desertion, without reasonable excuse, for two years or upwards.

Every such petition shall state, as distinctly as the nature of the case permits, the facts on which the claim to have such marriage dissolved is founded. Contents of petition.

11. Upon any such petition presented by a husband, the petitioner shall make the alleged adulterer a co-respondent to the said petition, Adulterer to be co-respondent.

unless he is excused from so doing on one of the following grounds, to be allowed by the Court:—

(1) that the respondent is leading the life of a prostitute, and that the petitioner knows of no person with whom the adultery has been committed;

(2) that the name of the alleged adulterer is unkown to the petitioner although he has made due efforts to discover it;

(3) that the alleged adulterer is dead.

Court to be satisfied of absence of collusion.

12. Upon any such petition for the dissolution of a marriage, the Court shall satisfy itself, so far as it reasonably can, not only as to the facts alleged, but also whether or not the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery, or has condoned the same, and shall also inquire into any counter-charge which may be made against the petitioner.

Dismissal of petition.

13. In case the Court, on the evidence in relation to any such petition, is satisfied that the petitioner's case has not been proved, or is not satisfied that the alleged adultery has been committed,

or finds that the petitioner has, during the marriage, been accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents,

then and in any of the said cases the Court shall dismiss the petition.

When a petition is dismissed by a District Court under this section, the petitioner may, nevertheless, present a similar petition to the High Court.

Power to Court to pronounce decree for dissolving marriage.

14. In case the Court is satisfied on the evidence that the case of the petitioner has been proved,

and does not find that the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents,

the Court shall pronounce a decree declaring such marriage to be dissolved in the manner and subject to all the provisions and limitations in sections 16 and 17 made and declared:

Provided that the Court shall not be bound to pronounce such decree if it finds that the petitioner has, during the marriage, been guilty of adultery,

or if the petitioner has, in the opinion of the Court, been guilty of unreasonable delay in presenting or prosecuting such petition,

or of cruelty towards the other party to the marriage,

or of having deserted or wilfully separated himself or herself from the other party before the adultery complained of, and without reasonable excuse,

or of such wilful neglect or misconduct of or towards the other party as has conduced to the adultery.

Condonation.

No adultery shall be deemed to have been condoned within the meaning of this Act unless where conjugal cohabitation has been resumed or continued.

Relief in case of opposition on certain grounds.

15. In any suit instituted for dissolution of marriage, if the respondent opposes the relief sought on the ground, in case of such a suit instituted by a husband, of his adultery, cruelty or desertion without reasonable excuse, or, in case of such a suit instituted by a wife, on the ground of her adultery and cruelty, the Court may in such suit give to the respondent, on his or her application, the same relief to which he or she would have been entitled in case he or she had presented a petition seeking such relief, and the respondent shall be competent to give evidence of or relating to such cruelty or desertion.

Decrees for dissolution to be *nisi*.

16. Every decree for a dissolution of marriage made by a High Court, not being a confirmation of a decree of a District Court, shall, in the first instance, be a decree *nisi*, not to be made absolute till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court by general or special order from time to time directs.

Collusion.

During that period any person shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not being brought before the Court.

On cause being so shown, the Court shall deal with the case by making the decree absolute, or by reversing the decree *nisi*, or by requiring further inquiry, or otherwise as justice may demand.

The High Court may order the costs of counsel and witnesses, and otherwise arising from such cause being shown, to be paid by the parties or such one or more of them as it thinks fit, including a wife if she have separate property.

Whenever a decree *nisi* has been made, and the petitioner fails, within a reasonable time, to move to have such decree made absolute, the High Court may dismiss the suit.

Confirmation of decree for dissolution by District Judge.

17. Every decree for a dissolution of marriage made by a District Judge shall be subject to confirmation by the High Court.

Cases for confirmation of a decree for dissolution of marriage shall be heard (where the number of the Judges of the High Court is three or upwards) by a Court composed of three such Judges, and in case of difference the opinion of the majority shall prevail, or (where the number of the Judges of the High Court is two) by a Court composed of such two Judges, and in case of difference the opinion of the senior Judge shall prevail.

The High Court, if it think further enquiry or additional evidence to be necessary, may direct such enquiry to be made or such evidence to be taken.

The result of such enquiry and the additional evidence shall be certified to the High Court by the District Judge, and the High Court shall thereupon make an order confirming the decree for dissolution of marriage, or such other order as to the Court seems fit:

Provided that no decree shall be confirmed under this section till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court by general or special order from time to time directs.

During the progress of the suit in the Court of the District Judge, any person, suspecting that any parties to the suit are or have been acting in collusion for the purpose of obtaining a divorce, shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to apply to the High Court to remove the suit under section 8, and the High Court shall thereupon, if it think fit, remove such suit and try and determine the same as a Court of original jurisdiction, and the provisions contained in section 16 shall apply to every suit so removed; or it may direct the District Judge to take such steps in respect of the alleged collusion as may be necessary to enable him to make a decree in accordance with the justice of the case.

IV.—Nullity of Marriage.

Petition for decree of nullity.

18. Any husband or wife may present a petition to the District Court or to the High Court, praying that his or her marriage may be declared null and void.

Grounds of decrees.

19. Such decree may be made on any of the following grounds:—

(1) that the respondent was impotent at the time of the marriage and at the time of the institution of the suit;

(2) that the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity;

(3) that either party was a lunatic or idiot at the time of the marriage;

(4) that the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force.

Nothing in this section shall affect the jurisdiction of the High Court to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud.

Confirmation of District Judge's decree.

20. Every decree of nullity of marriage made by a District Judge shall be subject to confirmation by the High Court, and the provisions of section 17, clauses 1, 2, 3 and 4, shall, *mutatis mutandis*, apply to such decrees.

Children of annulled marriage.

21. Where a marriage is annulled on the ground that a former husband or wife was living, and it is adjudged that the subsequent marriage was contracted in good faith and with the full belief of the parties that the former husband or wife was dead, or when a marriage is annulled on the ground of insanity, children begotten before the decree is made shall be specified in the decree, and shall be entitled to succeed, in the same manner as legitimate children, to the estate of the parent who at the time of the marriage was competent to contract.

V.—Judicial Separation.

Bar to decree for divorce *a mensâ et toro*; but judicial separation obtainable by husband or wife.

22. No decree shall hereafter be made for a divorce *a mesâ et toro*, but the husband or wife may obtain a decree of judicial separation, on the ground of adultery, or cruelty, or desertion without reasonable excuse for two years or upwards, and such decree shall have the effect of a divorce *a mensâ et toro* under the existing law, and such other legal effect as hereinafter mentioned.

Application for separation made by petition.

23. Application for judicial separation on any one of the grounds aforesaid may be made by either husband or wife by petition to the District Court or the High Court; and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree judicial separation accordingly.

Separated wife deemed spinster with respect to after-acquired property.

24. In every case of a judicial separation under this Act, the wife shall, from the date of the sentence, and whilst the separation continues, be considered as unmarried with respect to property of every description which she may acquire, or which may come to or devolve upon her.

Such property may be disposed of by her in all respects as an unmarried woman, and on her decease the same shall, in case she dies intestate, go as the same would have gone if her husband had been then dead:

Provided that, if any such wife again cohabits with her husband, all such property as she may be entitled to when such cohabitation takes place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.

Separated wife deemed spinster for purposes of contract and suing.

25. In every case of a judicial separation under this Act, the wife shall whilst so separated, be considered as an unmarried woman for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding; and her husband shall not be liable in respect of any contract, act or costs entered into, done, omitted or incurred by her during the separation:

Provided that where, upon any such judicial separation, alimony has been decreed or ordered to be paid to the wife, and the same is not duly paid by the husband, he shall be liable for necessaries supplied for her use:

Provided also that nothing shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband.

Reversal of Decree of Separation.

Decree of separation obtained during absence of husband or wife may be reversed.

26. Any husband or wife, upon the application of whose wife or husband, as the case may be, a decree of judicial separation has been pronounced, may, at any time thereafter, present a petition to the Court by which the decree was pronounced, praying for a reversal of such decree, on the ground that it was obtained in his or her absence, and that there was reasonable excuse for the alleged desertion, where desertion was the ground of such decree.

The Court may, on being satisfied of the truth of the allegations of such petition, reverse the decree accordingly; but such reversal shall not prejudice or affect the rights or remedies which any other person would have had, in case it had not been decreed, in respect of any debts, contracts or acts of the wife incurred, entered into or done between the times of the sentence of separation and of the reversal thereof.

VI.—Protection-orders.

Deserted wife may apply to Court for protection.

27. Any wife to whom section 4 of the Indian Succession Act, 1865,[1] does not apply, may, when deserted by her husband, present a petition to the District Court or the High Court, at any time after such desertion, for an order to protect any property which she may have acquired or may acquire, and any property of which she may have X of 1865.

[1] Printed, General Acts, Vol. I.

become possessed or may become possessed after such desertion, against her husband or his creditors, or any person claiming under him.

Court may grant protection-order.

28. The Court, if satisfied of the fact of such desertion, and that the same was without reasonable excuse, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and other property from her husband and all creditors and persons claiming under him. Every such order shall state the time at which the desertion commenced, and shall, as regards all persons dealing with the wife in reliance thereon, be conclusive as to such time.

Discharge or variation of orders.

29. The husband or any creditor of, or person claiming under him, may apply to the Court by which such order was made for the discharge or variation thereof, and the Court, if the desertion has ceased, or if for any other reason it think fit so to do, may discharge or vary the order accordingly.

Liability of husband seizing wife's property after notice of order.

30. If the husband, or any creditor of, or person claiming under, the husband, seizes or continues to hold any property of the wife after notice of any such order, he shall be liable, at the suit of the wife (which she is hereby empowered to bring), to return or deliver to her the specific property, and also to pay her a sum equal to double its value.

Wife's legal position during continuance of order.

31. So long as any such order of protection remains in force, the wife shall be and be deemed to have been, during such desertion of her, in the like position in all respects, with regard to property and contracts and suing and being sued, as she would be under this Act if she obtained a decree of judicial separation.

VII.—Restitution of Conjugal Rights.

Petition for restitution of conjugal rights.

32. When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, either wife or husband may apply, by petition to the District Court or the High Court, for restitution of conjugal rights, and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

Answer to petition.

33. Nothing shall be pleaded in answer to a petition for restitution of conjugal rights which would not be ground for a suit for judicial separation or for a decree of nullity of marriage.

VIII.—Damages and Costs.

Husband may claim damages from adulterer.

34. Any husband may, either in a petition for dissolution of marriage or for judicial separation, or in a petition to the District

Court or the High Court limited to such object only, claim damages from any person on the ground of his having committed adultery with the wife of such petitioner.

Such petition shall be served on the alleged adulterer and the wife unless the Court dispenses with such service, or directs some other service to be substituted.

The damages to be recovered on any such petition shall be ascertained by the said Court, although the respondents or either of them may not appear.

After the decision has been given, the Court may direct in what manner such damages shall be paid or applied.

Power to order adulterer to pay costs.

35. Whenever in any petition presented by a husband, the alleged adulterer has been made a co-respondent, and the adultery has been established, the Court may order the co-respondent to pay the whole or any part of the cost of the proceedings:

Provided that the co-respondent shall not be ordered to pay the petitioner's costs—

(1) if the respondent was, at the time of the adultery, living apart from her husband and leading the life of a prostitute, or

(2) if the co-respondent had not, at the time of the adultery, reason to believe the respondent to be a married woman.

Power to order litigious intervenor to pay costs.

Whenever any application is made under section 17, the Court, if it thinks that the applicant had no grounds or no sufficient grounds for intervening, may order him to pay the whole or any part of the costs occasioned by the application.

IX.—Alimony.

Alimony *pendente lite.*

36. In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection, the wife may present a petition for alimony pending the suit.

Such petition shall be served on the husband; and the Court, on being satisfied of the truth of the statements therein contained, may make such order on the husband for payment to the wife of alimony pending the suit as it may deem just:

Provided that alimony pending the suit shall in no case exceed one-fifth of the husband's average nett income for the three years next preceding the date of the order, and shall continue, in case of a decree for dissolution of marriage or of nullity of marriage, until the decree is made absolute or is confirmed, as the case may be.

Power to order permanent alimony.

37. The High Court may, if it think fit, on any decree absolute declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife,

and the District Judge may, if he thinks fit, on the confirmation of any decree of his, declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife,

order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it thinks reasonable, and for that purpose may cause a proper instrument to be executed by all necessary parties.

Power to order monthly or weekly payments.

In every such case the Court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the Court may think reasonable:

Provided that if the husband afterwards from any cause becomes unable to make such payments, it shall be lawful for the Court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part, as to the Court seems fit.

Court may direct payment of alimony to wife or to her trustee.

38. In all cases in which the Court makes any decree or order for alimony it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court seem expedient, and may from time to time appoint a new trustee, if it appears to the Court expedient so to do.

X.—Settlements.

Power to order settlement of wife's property for benefit of husband and children.

39. Whenever the Court pronounces a decree of dissolution of marriage or judicial separation for adultery of the wife, if it is made to appear to the Court that the wife is entitled to any property, the Court may, if it think fit, order such settlement as it thinks reasonable to be made of such property or any part thereof, for the benefit of the husband, or of the children of the marriage, or of both.

Any instrument executed pursuant to any order of the Court at the time of or after the pronouncing of a decree of dissolution of marriage or judicial separation shall be deemed valid notwithstanding the existence of the disability of coverture at the time of the execution thereof.

Settlement of damages.

The Court may direct that the whole or any part of the damages recovered under section 34 shall be settled for the benefit of the children of the marriage, or as a provision for the maintenance of the wife.

Inquiry into existence of ante-nuptial or post-nuptial settlements.

40. The High Court, after a decree absolute for dissolution of marriage, or a decree of nullity of marriage,

and the District Court, after its decree for dissolution of marriage or of nullity of marriage has been confirmed,

may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders, with reference to the application of the whole or a portion of the property settled, whether for the benefit of the husband or the wife, or of the children (if any) of the marriage, or of both children and parents, as to the Court seems fit:

Provided that the Court shall not make any order for the benefit of the parents or either of them at the expense of the children.

XI.—Custody of Children.

Power to make orders as to custody of children in suit for separation.

41. In any suit for obtaining a judicial separation the Court may from time to time, before making its decree, make such interim orders, and may make such provision in the decree, as it deems proper with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of such suit, and may, if it think fit, direct proceedings to be taken for placing such children under the protection of the said Court.

Power to make such orders after decree.

42. The Court, after a decree of judicial separation, may upon application (by petition) for this purpose make, from time to time, all such orders and provision, with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of the decree, or for placing such children under the protection of the said Court, as might have been made by such decree or by interim orders in case the proceedings for obtaining such decree were still pending.

Power to make orders as to custody of children in suits for dissolution or nullity.

43. In any suit for obtaining a dissolution of marriage or a decree of nullity of marriage instituted in, or removed to, a High Court, the Court may from time to time, before making its decree absolute or its decree (as the case may be), make such interim orders, and may make such provision in the decree absolute or decree,

and in any such suit instituted in a District Court, the Court may from time to time, before its decree is confirmed, make such interim orders, and may make such provision on such confirmation,

as the High Court or District Court (as the case may be) deems proper with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of the suit;

and may, if it think fit, direct proceedings to be taken for placing such children under the protection of the Court.

Power to make such orders after decree or confirmation.

44. The High Court, after a decree absolute for dissolution of marriage or a decree of nullity of marriage,

and the District Court, after a decree for dissolution of marriage or of nullity of marriage has been confirmed.

may, upon application by petition for the purpose, make from time to time all such orders and provision, with respect to the custody, maintenance and education of the minor children, the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the said Court, as might have been made by such decree absolute or decree (as the case may be), or by such interim orders as aforesaid.

XII.—Procedure.

Code of Civil Procedure to apply.

45. Subject to the provisions herein contained, all proceedings under this Act between party and party shall be regulated by the Code of Civil Procedure.[1]

Forms of petitions and statements.

46. The forms set forth in the schedule to this Act, with such variation as the circumstances of each case require, may be used for the respective purposes mentioned in such schedule.

Stamp on petition.

47. Every petition [2] under this Act for a decree of dissolution of marriage or of nullity of marriage, or of judicial separation [3] * * * * * * shall [3] * * * state that there is not any collusion or connivance between the petitioner and the other party to the marriage;

Petition to state absence of collusion.

Statements to be verified.

the statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in manner required by law for the verification of plaints, and may at the hearing be referred to as evidence.

Suits on behalf of lunatics.

48. When the husband or wife is a lunatic or idiot, any suit under this Act (other than a suit for restitution of conjugal rights) may be brought on his or her behalf by the committtee or other person entitled to his or her custody.

Suits by minors.

49. Where the petitioner is a minor, he or she shall sue by his or her next friend to be approved by the Court; and no petition presented by a minor under this Act shall be filed until the next friend has undertaken in writing to be answerable for costs.

Such undertaking * * * [4] shall be filed in Court, and the next friend shall thereupon be liable in the same manner and to the same extent as if he were a plaintiff in an ordinary suit.

Service of petition.

50. Every petition under this Act shall be served on the party to be affected thereby, either within or without British India, in such manner as the High Court by general or special order from time to time directs:

[1] *See* now the Code of Civil Procedure, 1908 (Act V of 1908), General Acts, Vol. VI.

[2] For court-fee, *see* now the Court-fees Act, 1870 (VII of 1870), Sch. II, No. 20, *infra*.

[3] The words " or of reversal of judicial separation, or for restitution of conjugal rights, or for damages, shall bear a stamp of five rupees, and," and the words " in the first, second, and third cases mentioned in this section," were repealed by the Court-fees Act, 1870 (VII of 1870), *infra*.

[4] The words " shall bear a stamp of eight annas and " were repealed by the Court-fees Act, 1870 (VII of 1870). For court-fee, *see* now Art. 7 of Sch. II of that Act.

Provided that the Court may dispense with such service altogether in case it seems necessary or expedient so to do.

Mode of taking evidence.

51. The witnesses in all proceedings before the Court, where their attendance can be had, shall be examined orally, and any party may offer himself or herself as a witness, and shall be examined, and may be cross-examined and re-examined, like any other witness:

Provided that the parties shall be at liberty to verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, or by direction of the Court, be subject to be cross-examined by or on behalf of the opposite party orally, and after such cross-examination may be re-examined orally as aforesaid by or on behalf of the party by whom such affidavit was filed.

Competence of husband and wife to give evidence as to cruelty or desertion.

52. On any petition presented by a wife, praying that her marriage may be dissolved by reason of her husband having been guilty of adultery coupled with cruelty, or of adultery coupled with desertion without reasonable excuse, the husband and wife respectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion.

Power to close doors.

53. The whole or any part of any proceeding under this Act may be heard, if the Court thinks fit, with closed doors.

Power to adjourn.

54. The Court may from time to time adjourn the hearing of any petition under this Act, and may require further evidence thereon if it sees fit so to do.

Enforcement of and appeal from orders and decrees.

55. All decrees and orders made by the Court in any suit or proceeding under this Act shall be enforced and may be appealed [1] from, in the like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction are enforced and may be appealed from under the laws, rules and orders for the time being in force:

Provided that there shall be no appeal from a decree of a District Judge for dissolution of marriage or of nullity of marriage: nor from the order of the High Court confirming or refusing to confirm such decree.

No appeals as to costs.

Provided also that there shall be no appeal on the subject of costs only.

Appeal to Queen in Council.

56. Any person may appeal to Her Majesty in Council from any decree (other than a decree *nisi*) or order under this Act of a High Court made on appeal or otherwise,

and from any decree (other than a decree *nisi*) or order made in the exercise of original jurisdiction by Judges of a High Court or of any Division Court from which an appeal shall not lie to the High Court,

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[1] For court-fee on memorandum of appeal, *see* the Court-fees Act, 1870 (VII of 1870), Sch. II, No. 20, *infra*.

when the High Court declares that the case is a fit one for appeal to Her Majesty in Council.

XIII.—Re-marriage.

Liberty to parties to marry again.

57. When six months after the date of an order of a High Court confirming the decree for a dissolution of marriage made by a District Judge have expired,

or when six months after the date of any decree of a High Court dissolving a marriage have expired, and no appeal has been presented against such decree to the High Court in its appellate jurisdiction,

or when any such appeal has been dismissed,

or when in the result of any such appeal any marriage is declared to be dissolved,

but not sooner, it shall be lawful for the respective parties to the marriage to marry again, as if the prior marriage had been dissolved by death:

Provided that no appeal to Her Majesty in Council has been presented against any such order or decree.

When such appeal has been dismissed, or when in the result thereof the marriage is declared to be dissolved, but not sooner, it shall be lawful for the respective parties to the marriage to marry again as if the prior marriage had been dissolved by death.

English clergyman not compelled to solemnize marriages of persons divorced for adultery.

58. No clergyman in Holy Orders of the * * [1] Church of England * * [2] shall be compelled to solemnize the marriage of any person whose former marriage has been dissolved on the ground of his or her adultery, or shall be liable to any suit, penalty or censure for solemnizing or refusing to solemnize the marriage of any such person.

English minister refusing to perform ceremony to permit use of his church.

59. When any minister of any church or chapel of the said * * [1] Church refuses to perform such marriage service between any persons who, but for such refusal would be entitled to have the same service performed in such church or chapel, such minister shall permit any other minister in Holy Orders of the said Church entitled to officiate within the diocese in which such church or chapel is situate, to perform such marriage service in such church or chapel.

XIV.—Miscellaneous.

Decree for separation or protection order valid as to persons dealing with wife before reversal.

60. Every decree for judicial separation or order to protect property obtained by a wife under this Act shall, until reversed or discharged, be deemed valid, so far as necessary, for the protection of any person dealing with the wife.

[1] The word " United " was repealed by the Repealing Act, 1873 (XII of 1873).
[2] The words " and Ireland " were repealed by Act XII of 1873.

No reversal, discharge or variation of such decree or order shall affect any rights or remedies which any person would otherwise have had in respect of any contracts or acts of the wife entered into or done between the dates of such decree or order and of the reversal, discharge or variation thereof.

Indemnity of persons making payment to wife without notice of reversal of decree or protection order.

All persons who in reliance on any such decree or order make any payment to, or permit any transfer or act to be made or done by, the wife who has obtained the same shall, notwithstanding such decree or order may then have been reversed, discharged or varied, or the separation of the wife from her husband may have ceased, or at some time since the making of the decree or order been discontinued, be protected and indemnified as if, at the time of such payment, transfer or other act, such decree or order were valid and still subsisting without variation, and the separation had not ceased or been discontinued,

unless, at the time of the payment, transfer or other act, such persons had notice of the reversal, discharge or variation of the decree or order or of the cessation or discontinuance of the separation.

Bar of suit for criminal conversation.

61. After this Act comes into operation, no person competent to present a petition under sections 2 and 10 shall maintain a suit for criminal conversation with his wife.

Power to make rules.

62. The High Court shall make such rules under this Act as it may from time to time consider expedient, and may from time to time alter and add to the same:[1]

Provided that such rules, alterations and additions are consistent with the provisions of this Act and the Code of Civil Procedure.[2]

All such rules, alterations and additions shall be published in the local official Gazette.

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[1] For rule in force in Bombay as to confirmation of decrees for dissolution of marriage, *see* Bom. R. & O.

[2] *See* now the Code of Civil Procedure, 1908 (Act V of 1908), General Acts, Vol. VI.

SCHEDULE OF FORMS.

No. 1.—Petition by husband for a dissolution of marriage with damages against co-respondent, by reason of adultery.

(*See sections 10 and 34.*)

In the (High) Court of .

To the Hon'ble Mr. Justice [*or* To the Judge of].

The day of , 186 .

The petition of *A. B.*, of

Sheweth,

1. That your petitioner was on the day of , one thousand eight hundred and , lawfully married to *C. B.*, then *C. D.*, spinster, at .[a]

2. That from his said marriage, your petitioner lived and cohabited with his said wife at and at , in , and lastly at in , and that your petitioner and his said wife have had issue of their said marriage, *five* children, of whom *two* sons only survive, aged respectively *twelve* and *fourteen* years.

3. That during the *three* years immediately preceding the day of one thousand eight hundred and , *X. Y.* was constantly, with few exceptions, residing in the house of your petitioner at aforesaid, and that on divers occasions during the said period, the dates of which are unknown to your petitioner, the said *C. B.* in your petitioner's said house committed adultery with the said *X. Y.*

4. That no collusion or connivance exists between me and my said wife for the purpose of obtaining a dissolution of our said marriage or for any other purpose.

Your petitioner, therefore, prays that this (Hon'ble) Court will decree a dissolution of the said marriage, and that the said *X. Y.* do pay the sum of rupees 5,000 as damages by reason of his having committed adultery with your petitioner's said wife, such damages to be paid to your petitioner, or otherwise paid or applied as to this (Hon'ble) Court seems fit.

(Signed) *A. B.*[b]

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[a] If the marriage was solemnized out of India, the adultery must be shown to have been committed in India.

[b] The petition must be signed by the petitioner.

Form of Verification.

I, *A. B.*, the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

No. 2.—Respondent's statement in answer to No. 1.

In the Court of the day of
Between *A. B.*, petitioner,
C. B., respondent, and
X. Y., co-respondent.

C. B., the respondent, by *D. E.*, her attorney [*or* vakil], in answer to the petition of *A. B.*, says that she denies that she has on divers or any occasions committed adultery with *X. Y.*, as alleged in the third paragraph of the said petition.

Wherefore the respondent prays that this (Hon'ble) Court will reject the said petition.

(Signed) *C. B.*

No. 3.—Co-Respondent's statement in answer to No. 1.

In the (High) Court of
The day of
Between *A. B.*, petitioner,
C. B., respondent, and
X. Y., co-respondent.

X. Y., the co-respondent, in answer to the petition filed in this cause, saith that he denies that he committed adultery with the said *C. B.* as alleged in the said petition.

Wherefore the said *X. Y.* prays that this (Hon'ble) Court will reject the prayer of the said petitioner and order him to pay the costs of and incident to the said petition.

(Signed) *X. Y.*

No. 4.—Petition for Decree of Nullity of Marriage.

(*See section 18.*)

In the (High) Court of
To the Hon'ble Mr. Justice [*or* To the Judge of].
The day of , 186 .
The petition of *A. B.*, falsely called *A. D.*,

Sheweth,

1. That on the day of , one thousand eight hundred

and , your petitioner, then a spinster, eighteen years of age, was married in fact, though not in law, to *C. D.*, then a bachelor of about thirty years of age, at [*some place in India*].

2. That from the said day of , one thousand eight hundred and , until the month of , one thousand eight hundred and , your petitioner lived and cohabited with the said *C. D.*, at divers places, and particularly at aforesaid.

3. That the said *C. D.* has never consummated the said pretended marriage by carnal copulation.

4. That at the time of the celebration of your petitioner's said pretended marriage, the said *C. D.* was, by reason of his impotency or malformation, legally incompetent to enter into the contract of marriage.

5. That there is no collusion or connivance between her and the said *C. D.* with respect to the subject of this suit.

Your petitioner therefore prays that this (Hon'ble) Court will declare that the said marriage is null and void.

(Signed) *A. B.*

Form of Verification: see No. 1.

No. 5.—PETITION BY WIFE FOR JUDICIAL SEPARATION ON THE GROUND OF HER HUSBAND'S ADULTERY.

(*See section 22.*)

In the (High) Court of

To the Hon'ble Mr. Justice [*or* To the Judge of].

The day of 186 .

The petition of *C. B.*, of , the wife of *A. B.*

SHEWETH,

1. That on the day of , one thousand eight hundred and *sixty* , your petitioner, then *C. D.*, was lawfully married to *A. B.* at the Church of , in the .

2. That after her said marriage, your petitioner cohabited with the said *A. B.* at and at , and that your petitioner and her said husband have issue living of their said marriage, *three* children, to wit, *etc.*, *etc.*[a]

3. That on divers occasions in or about the months of *August*, *September* and *October*, one thousand eight hundred and *sixty* , the said *A. B.*, at aforesaid, committed adultery with *E. F.*, who

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[a] State the respective ages of the children.

was then living in the service of the said *A. B.* and your petitioner at their said residence aforesaid.

4. That on divers occasions in the months of *October, November* and *December*, one thousand eight hundred and *sixty* , the said *A. B.*, at aforesaid, committed adultery with *G. H.*, who was then living in the service of the said *A. B.* and your petitioner at their said residence aforesaid.

5. That no collusion or connivance exists between your petitioner and the said *A. B.* with respect to the subject of the present suit.

Your petitioner therefore prays that this (Hon'ble) Court will decree a judicial separation to your petitioner from her said husband by reason of his aforesaid adultery.

(Signed) *C. B.*[a]

Form of Verification: see No. 1.

No. 6.—Statement in answer to No. 5.

In the (High) Court of

B. against *B.*

The day of .

The respondent, *A. B.*, by *W. Y.*, his attorney [*or* vakil], saith,—

1. That he denies that he committed adultery with *E. F.*, as in the third paragraph of the petition alleged.

2. That the petitioner condoned the said adultery with *E. F.*, if any.

3. That he denies that he committed adultery with *G. H.*, as in the fourth paragraph of the petition alleged.

4. That the petitioner condoned the said adultery with *G. H.*, if any.

Wherefore this respondent prays that this (Hon'ble) Court will reject the prayer of the said petition.

(Signed) *A. B.*

No. 7.—Statement in reply to No. 6.

In the (High) Court of

B. against *B.*

The day of .

The petitioner, *C. B.*, by her attorney [*or* vakil], says,—

1. That she denies that she condoned the said adultery of the respondent with *E. F.*, as in the second paragraph of the statement in answer alleged.

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[a] The petition must be signed by the petitioner.

2. That even if she had condoned the said adultery, the same has been revived by the subsequent adultery of the respondent with *G. H.*, as set forth in the paragraph of the petition.

(Signed) *C. B.*

No. 8.—Petition for a judicial separation by reason of cruelty.

(*See section 22.*)

In the (High) Court of

To the Hon'ble Mr. Justice [*or* To the Judge of].

The day of , 186 .

The petition of *A. B.* (wife of *C. B.*) of

Sheweth,

1. That on the day of , one thousand eight hundred and , your petitioner, then *A. D.*, spinster, was lawfully married to *C. B.*, at .

2. That from her said marriage, your petitioner lived and cohabited with her said husband at until the day of , one thousand eight hundred and , when your petitioner separated from her said husband as hereinafter more particularly mentioned, and that your petitioner and her said husband have had no issue of their said marriage.

3. That from and shortly after your petitioner's said marriage, the said *C. B.* habitually conducted himself towards your petitioner with great harshness and cruelty, frequently abusing her in the coarsest and most insulting language, and beating her with his fists, with a cane, or with some other weapon.

4. That on an evening in or about the month of one thousand eight hundred and , the said *C. B.* in the highway and opposite to the house in which your petitioner and the said *C. B.* were then residing at aforesaid, endeavoured to knock your petitioner down, and was only prevented from so doing by the interference of *F. D.*, your petitioner's brother.

5. That subsequently on the same evening, the said *C. B.*, in his said house at aforesaid, struck your petitioner with his clenched fists a violent blow on her face.

6. That on one Friday night in the month of , one thousand eight hundred and , the said *C. B.*, in , without provocation, threw a knife at your petitioner, thereby inflicting a severe wound on her right hand.

7. That on the afternoon of the day of , one thousand eight hundred and , your petitioner, by reason of the great and

continued cruelty practised towards her by her said husband, with assistance withdrew from the house of her said husband to the house of her father at , that from and after the said day of , one thousand eight hundred and , your petitioner hath lived separate and apart from her said husband, and hath never returned to his house or to cohabitation with him.

8. That there is no collusion or connivance between your petitioner and her said husband with respect to the subject of the present suit.

Your petitioner, therefore, prays that this (Hon'ble) Court will decree a judicial separation between your petitioner and the said *C. B.*, and also order that the said *C. B.* do pay the costs of and incident to these proceedings.

(Signed) *A. B.*

Form of Verification: see No. 1.

No. 9.—STATEMENT IN ANSWER TO No. 8.

In the (High) Court of

The day of .

Between *A. B.*, petitioner, and

C. B., respondent.

C. B., the respondent, in answer to the petition filed in this cause, by *W. J.*, his attorney [*or* vakil], saith that he denies that he has been guilty of cruelty towards the said *A. B.*, as alleged in the said petition.

(Signed) *C. B.*

No. 10.—PETITION FOR REVERSAL OF DECREE OF SEPARATION.

(*See section 24.*)

In the (High) Court of

To the Hon'ble Mr. Justice [*or* To the Judge of].

The day of , 186 .

The petition of *A. B.*, of .

SHEWETH,

1. That your petitioner was on the day of , lawfully married to .

2. That on the day of , this (Hon'ble) Court, at the

petition of , pronounced a decree affecting the petitioner to the effect following, to wit,—

Here set out the decree.

3. That such decree was obtained in the absence of your petitioner, who was then residing at

[*State facts tending to show that the petitioner did not know of the proceedings; and, further, that had he known he might have offered a sufficient defence,*]

or

That there was reasonable ground for your petitioner leaving his said wife for that his said wife

[*Here state any legal grounds justifying the petitioner's separation from his wife.*]

Your petitioner, therefore, prays that this (Hon'ble) Court will reverse the said decree.

(Signed) *A. B.*

Form of Verification: see No. 1.

No. 11.—Petition for Protection-order.

(*See section 27.*)

In the (High) Court of

To the Hon'ble Mr. Justice [*or* To the Judge of].

The day of , 186 .

The petition of C. B., of , the wife of *A. B.*

Sheweth,

That on the day of she was lawfully married to *A. B.* at .

That she lived and cohabited with the said *A. B.* for years at , and also at , and had had children, issue of her said marriage, of whom are now living with the applicant, and wholly dependent upon her earnings.

That on or about , the said *A. B.*, without any reasonable cause, deserted the applicant, and hath ever since remained separate and apart from her.

That since the desertion of her said husband, the applicant hath maintained herself by her own industry [*or* on her own property, *as the case may be*] and hath thereby and otherwise acquired certain property consisting of [*here state generally the nature of the property*].

Wherefore she prays an order for the protection of her earnings and property acquired since the said day of , from the said *A. B.*, and from all creditors and persons claiming under him.

(Signed) *C. B.*

No. 12.—PETITION FOR ALIMONY PENDING THE SUIT.

(*See section 36.*)

In the (High) Court of

B. against *B.*

To the Hon'ble Mr. Justice [*or* To the Judge of].

The day of , 186 .

The petition of *C. B.*, the lawful wife of *A. B.*

SHEWETH,

1. That the said *A. B.* has for some years carried on the business of , at , and from such business derives the net annual income of from Rs. 4,000 to 5,000.

2. That the said *A. B.* is possessed of plate, furniture, linen and other effects at his said house aforesaid, all of which he acquired in right of your petitioner as his wife, or purchased with money he acquired through her, of the value of Rs. 10,000.

3. That the said *A. B.* is entitled, under the will of his father, subject to the life-interest of his mother therein, to property of the value of Rs. 5,000 or some other considerable amount.[a]

Your petitioner, therefore, prays that this (Hon'ble) Court will decree such sum or sums of money by way of alimony, pending the suit, as to this (Hon'ble) Court may seem meet.

(Signed) *C. B.*

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[a] The petitioner should state her husband's inc me as accurately as possible.

Form of Verification: see No. 1.

No. 13.—Statement in answer to No. 12.

In the (High) Court of

B. against B.

A. B., of , the above-named respondent, in answer to the petition for alimony, pending the suit of *C. B.*, says—

1. In answer to the first paragraph of the said petition, I say that I have for the last *three* years carried on the business of , at , and that, from such business, I have derived a nett annual income of Rs. 900, but less than Rs. 1,000.

2. In answer to the second paragraph of the said petition, I say that I am possessed of plate, furniture, linen and other chattels and effects at my said house aforesaid, of the value of Rs. 7,000, but as I verily believe of no larger value. And I say that a portion of the said plate, furniture and other chattels and effects of the value of Rs. 1,500, belonged to my said wife before our marriage, but the remaining portions thereof I have since purchased with my own moneys. And I say that, save as hereinbefore set forth, I am not possessed of the plate and other effects as alleged in the said paragraph in the said petition, and that I did not acquire the same as in the said petition also mentioned.

3. I admit that I am entitled under the will of my father, subject to the life-interest of my mother therein, to property of the value of Rs. 5,000, that is to say, I shall be entitled under my said father's will, upon the death of my mother, to a legacy of Rs. 7,000, out of which I shall have to pay to my father's executors the sum of Rs. 2,000, the amount of a debt owing by me to his estate, and upon which debt I am now paying interest at the rate of five per cent. per annum.

4. And, in further answer to the said petition, I say that I have no income whatever except that derived from my aforesaid business, that such income, since my said wife left me, which she did on the day of last, has been considerably diminished, and that such diminution is likely to continue. And I say that out of my said income, I have to pay the annual sum of Rs. 100 for such interest as aforesaid to my late father's executors, and also to support myself and my two eldest children.

5. And, in further answer to the said petition, I say that, when my wife left my dwelling-house on the day of last, she took with her, and has ever since withheld and still withholds from me, plate, watches and other effects in the second paragraph of this my answer mentioned, of the value of, as I verily believe, Rs. 800 at the least; and I also say that, within five days of her departure from my house as aforesaid, my said wife received bills due to me from certain lodgers of mine, amounting in the aggregate to Rs. , and that she has ever since withheld and still withholds from me the same sum.

(Signed) *A. B.*

No. 14.—UNDERTAKING BY MINOR'S NEXT FRIEND TO BE ANSWERABLE FOR RESPONDENT'S COSTS.

(*See section 49.*)

In the (High) Court of

I, the undersigned, *A. B.*, of , being the next friend of *C. D.*, who is a minor, and who is desirous of filing a petition in this Court, under the Indian Divorce Act, against *D. D.* of , hereby undertake to be responsible for the costs of the said *D. D.* in such suit, and that, if the said *C. D.* fail to pay to the said *D. D.* when and in such manner as the Court shall order all such costs of such suit as the Court shall direct him (*or* her) to pay to the said *D. D.*, I will forthwith pay the same to the proper officer of this Court.

Dated this day of , 186 .

(Signed) *A. B.*

THE INDIAN ARTICLES OF WAR.

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ACT No. V OF 1869.[1]

[*26th February 1869.*]

An Act to consolidate and amend the Articles of War for the Government of Her Majesty's Native Indian Forces.

PREAMBLE.

WHEREAS it is expedient to consolidate and amend the Articles of

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1868, p. 1648; for proceedings in Council, *see ibid*, 1868, Supplement, pp. 8, 92 and 107, and *ibid*, 1869, Supplement, p. 301.

Act V of 1869 has been declared in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (*1*) and Sch. I, Bur. Code.

The Act has been applied to the Santhal Parganas by the Santhal Parganas Settlement Regulation (III of 1872), s. 3, as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899), Ben. Code; to the Arakan Hill District by the Arakan Hill District Laws Regulation, 1874 (IX of 1874), s. 3, Bur. Code; to British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890), s. 3, Bal. Code; and to Angul and the Khondmals by the Angul District Regulation, 1894 (I of 1894), s. 3, Ben. Code.

The Act as amended by the Indian Articles of War Amendment Act, 1894 (XII of 1894), is in force in the Shan States—*see* Schedule to the Shan States Laws and Criminal Justice Order, 1895, Bur. Code.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the Districts of Hazáribágh, Lohárdaga ([now called the Ranchi District] including the present District of Palamau), and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum [Gazette of India, 1881, Pt. I, p. 504].

Affidavits and declarations in writing, when made as a condition of enlistment under these Articles, are exempt from stamp-duty—*see* clause 4 of Sch. I to the Indian Stamp Act, 1899 (II of 1899), General Acts, Vol. V.

The pay and allowances of persons to whom these Articles apply are exempt from attachment and sale in execution of a decree—*see* proviso (*j*) to s. 60 (*1*), Code of Civil Procedure, 1908 (Act V of 1908), General Acts, Vol. VI.

As to arrest of deserters without warrant, *see* clause *sixthly* of s. 54 of the Code of Criminal Procedure, 1898 (Act V of 1898), General Acts, Vol. V.

The Indian Oaths Act, 1873 (X of 1873), does not apply to proceedings before Courts-martial—*see* s. 3 of the Act, *infra*.

War for the government of the Native officers, soldiers and other persons in Her Majesty's Indian Army; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

(*a*) *Short Title.*

This Act may be called the Indian Articles of War.

(*b*) *Commencement of Act.*

This Act shall come into operation on the first day of June 1869.

(*c*) *Repeal of Enactments.*

[*Repealed by Act XII of 1894, s. 2.*]

[1](*d*) *Application of Articles.*

These Articles shall apply to all—

(*a*) persons to whom they actually apply at present;

(*b*) persons commissioned or gazetted as Native officers, or gazetted as warrant officers, of Her Majesty's Indian Forces;

(*c*) medical subordinates;

(*d*) persons attested under these Articles;

(*e*) unattested recruits;

(*f*) persons enrolled under these Articles;

(*g*) persons, not otherwise subject to military law, who, on active service, in camp, on the march, or at any frontier post specified by the Governor General in Council by notification [2] in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, Her Majesty's Indian Forces;

Provided as follows:

44 & 45 Vict., c. 58. if any person claims to belong to a class to which the Army Act [3] is, and these Articles are not, applicable, the burden of proving that he belongs to that class shall lie upon him.

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[1] This clause was substituted for the original cl. (*d*) by the Indian Articles of War Amendment Act, 1894 (XII of 1894), s. 3, General Acts, Vol. IV.

[2] For such notification in respect of followers at Chumbi, Phari and Gyantse, *see* Gazette of India, 1907, Pt. I, p. 456.

[3] Coll. Stat., Vol. I.

[1](*e*) *Definitions.*

In these Articles, unless there is something repugnant in the subject or context,—

(*1*) "notification" means a notification published in the official Gazette:

(*2*) "prescribed" means prescribed by rules made by the Governor General in Council or by any authority empowered by him in this behalf:

(*3*) "British officer" means an officer holding a commission in Her Majesty's land forces, but does not include an honorary commissioned officer:

(*4*) "Native officer" means an officer commissioned or gazetted as an officer holding a Native rank in Her Majesty's Indian Forces:

(*5*) "officer" means a British officer or Native officer, but does not include a warrant officer or non-commissioned officer:

(*6*) "medical subordinate" means a senior hospital assistant, a hospital assistant of the first, second or third class, and a sub-hospital assistant, but does not include an officer:

(*7*) "superior officer", when used in relation to a person subject to these Articles, includes a warrant officer, a non-commissioned officer and an acting non-commissioned officer:

(*8*) "soldier" includes a non-commissioned officer and any armed person doing duty in the ranks of Her Majesty's Indian Forces:

(*9*) "recruit" means a person enlisted for enrolment in any corps or department as a soldier:

(*10*) "corps" means a unit of command, such as a regiment of cavalry, a regiment or battalion of infantry, a battery of artillery, and any other separate body of troops which is declared by the Governor General in Council by general or special order to be a corps for the purposes of these Articles; it also includes an army hospital corps and a transport corps:

(*11*) "department" includes any division or branch of a department:

(*12*) "military reward" means any gratuity or annuity for long service or good conduct; it also includes any good-conduct pay or pension and any other pecuniary reward:

(*13*) "enemy" includes all armed mutineers, armed rebels, armed rioters and pirates:

[1] This clause was substituted for the original cl. (*e*) by the Indian Articles of War Amendment Act, 1894 (XII of 1894), s. 4, General Acts, Vol. IV.

(*14*) "active service", as applied to a person subject to these Articles, means the time during which such person is attached to or forms part of a force which is engaged in operations against an enemy, or is engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country:

(*15*) the expression "India"[1] means British India, together with any territories of any Prince or Chief under the suzerainty of Her Majesty exercised through the Governor General in Council or through any Governor in Council or other officer subordinate to the Governor General in Council: and the expression "British India"[2] means all territories and places within Her Majesty's dominions which are for the time being governed by Her Majesty through the Governor General in Council or through any Governor in Council or other officer subordinate to the Governor General in Council:

(*16*) the expression "general officer of the Command" means the general officer commanding the forces in a Command: and the expression "Command" means one of the principal portions into which the army of India is, for the time being, divided:

(*17*) "commanding officer," when used in any provision of these Articles with reference to any separate portion of Her Majesty's forces or to any department, means the British officer whose duty it is under the Army Regulations, India, or, in the absence of any such regulation, by the custom of the service, to discharge with respect to that portion of the forces or that department the functions of commanding officer in regard to matters of the description referred to in that provision:

(*18*) "military custody" means the arrest or confinement of a person, according to the usages of the service:

(*19*) "court-martial" means a court-martial held under these Articles[3]:

(*20*) "criminal court" means a court of ordinary criminal justice in British India, or established or continued elsewhere by the authority of the Governor General in Council:

(*21*) "civil offence" means an offence which if committed in British India would be triable by a criminal court:

(*22*) "offence" means any act or omission punishable under these Articles and includes a civil offence as hereinbefore defined: and

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[1] *Cf.* definition in s. 18 (*5*) of the Interpretation Act, 1889 (52 & 53 Vict., c. 63). Coll. Stat., Vol. II, Ed. 1899, p. 862.

[2] *Cf.* definition in s. 3 (7) of the General Clauses Act, 1897 (X of 1897), General Acts, Vol. IV.

[3] *Cf.* with regard to the Indian Marine, the Indian Marine, Act, 1887 (XIV of 1887), General Acts, Vol. IV; as to volunteers, *see* the Indian Volunteers Act, 1869 (XX of 1869), *infra*. In connection with Courts-martial, *see* also s. 3 of the Indian Oaths Act, 1873 (X of 1873), *infra*.

(*23*) expressions occurring in the Indian Penal Code [1] and used in these Articles and not herein otherwise defined shall have the meanings respectively assigned to them by that Code. XLV of 1860

[2](*f*) *Saving of certain Regulations.*

Nothing in these Articles shall affect any regulations by which the respective offices and powers of cantonment magistrates and officers in charge of the police in cantonments are defined and controlled.

PART II.

THE ARTICLES OF WAR.

[3] TITLE I.

ENROLMENT, ATTESTATION, DISMISSAL AND DISCHARGE.

Enrolment and attestation.

Article 1.—(*1*) The Governor General in Council may, by notification, declare what persons or classes of persons shall be enrolled only, or be both enrolled and attested, respectively [4].

Mode of enrolment.

(*2*) A person shall be deemed to be enrolled under these Articles when his name has, with his consent, been entered in the prescribed manner on the list of a corps or department of Her Majesty's Indian Forces.

Mode of attestation.

(*3*) Subject to the provisions of this article with respect to recruits, every person to be attested under these Articles shall be taken before the prescribed civil or military officer, and that officer shall read and explain to him, or cause to be read and explained to him in his presence, the questions set forth in the prescribed form of attestation,[5] and such other matters (if any) as may be prescribed; and, after having cautioned him that if he makes a false answer to any question set forth in the attestation form he will be liable to be punished as provided by these Articles, shall record the answer to each question, and shall, if he is satisfied that the person fully understands the questions, and that the answer has been correctly recorded opposite each question, and if he perceives no impedi-

[1] General Acts, Vol. I.

[2] This clause was substituted for the original cl. (*f*) by the Indian Articles of War Amendment Act, 1894 (XII of 1894), s. 5, General Acts, Vol. IV.

[3] This Title and the Articles it contains were substituted for the original, by the Indian Articles of War Amendment Act, 1894 (XII of 1894), s. 6, *ibid*.

[4] For declaration and rules for enrolment made under this Article, *see* Gazette of India, 1895, Pt. I, p. 490; *ibid*, 1896, Pt. I, p. 964; *ibid*, 1899, Pt. I, p. 106; *ibid*, 1900, Pt. I, pp. 364 and 846; *ibid*, 1901, Pt. I, p. 434; *ibid*, 1902, Pt. I, pp. 292, 819 and 879; *ibid*, 1906, Pt. I, p. 812; *ibid*, 1907, Pt. I, p. 487.

[5] For alteration in form of attestation, *see* notification No. 951, Gazette of India, 1899, Pt. I, p. 797; *ibid* No. 183, Gazette of India, 1906, Pt. I, p. 374.

ment, administer to the person an affirmation or oath in the prescribed form.

(*4*) The form of affirmation or oath prescribed under this article shall contain a promise that the person to be attested will be faithful to Her Majesty, Her heirs and successors, and that he will serve in Her Majesty's Indian Forces and go wherever he is ordered by land or sea, and that he will obey all commands of any officer set over him, even to the peril of his life.

(*5*) When a recruit is reported fit for duty, an affirmation or oath in the same form shall be administered to him in the prescribed manner by the commanding officer in front of the corps or such portion thereof or such members of the department as shall be present.

(*6*) After administering the affirmation or oath, the officer shall authenticate the attestation paper by his signature, and the person shall then be deemed to have been attested.

Treatment of enrolment and attestation as of same effect in certain cases.

(*7*) Subject to any rules which may be prescribed, the Commander-in-Chief in India, or the general officer of the Command, may direct that any persons to whom these Articles apply as attested persons shall, for the purposes of these Articles, be deemed to be enrolled, and that any persons to whom these Articles apply as enrolled persons shall, for the purposes of these Articles, be deemed to be attested.

Rank and subordination.

[1] *Article 2.*—(*1*) Subject to the provisions of the Army Act,[2] the Governor General in Council may, by notification,[3] direct that persons of any class subject to these Articles shall, for any of the purposes of these Articles, be deemed to be Native officers, warrant officers or non-commissioned officers; and,

44 & 45 Vict., c. 58.

(*2*) Subject as aforesaid, any prescribed authority may issue an order giving a like direction with respect to any such person.

(*3*) Any notification or order issued under this article may be cancelled by the authority issuing the same; and,

(*4*) Subject as aforesaid, any person of the said classes with respect to whom no such notification or order is in force shall, so far as may be, be deemed for all the purposes of these Articles to be of a rank inferior to that of a non-commissioned officer.

(*5*) Should any question arise as to the rank of any other person subject to these Articles, or as to whether any such person is above or below a specified rank, the decision of the Governor General in Council thereon shall be conclusive.

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[1] *See* footnote to Title I, Part II, *supra*

[2] Coll. Stat., Vol. II.

[3] For instance of such a notification, declaring that certain persons serving with the Supply and Transport Corps shall be non-commissioned officers in that Corps, *see* Gazette of India, 1903, Pt. I, p. 369.

(*6*) Every person subject to these Articles shall, for the purposes thereof, be deemed to be under the commanding officer of the corps or department (if any) to which he is attached, and, if not attached to any corps or department, under any officer who may for the time being be named as his commanding officer by the general or other officer commanding the force with which such person may for the time being be serving, or of any other prescribed officer, or, if no such officer is named or prescribed, under the said general or other officer commanding:

Provided that a general or other officer commanding shall not place any person under an officer of official rank inferior to that of such person if there is present at the place where such person is any officer of higher rank under whom he can be placed.

Dismissal and discharge of commissioned officers.

[1] *Article 3.*—(*1*) Every Native officer shall be liable to dismissal from the service by the sentence of a general court-martial, and to dismissal or discharge by order of the Governor General in Council, or of the Commander-in-Chief in India, or of the general officer of the Command to which he belongs.

(*2*) A Native officer dismissed under these Articles shall forfeit all claim to pension.

Dismissal and discharge of other persons.

[1] *Article 4.*—(*1*) Every person subject to these Articles, other than a Native officer, shall be liable to—

(*a*) dismissal from the service by the sentence of any court-martial empowered to try him, and

(*b*) dismissal or discharge from the service by order of the Governor General in Council, or of the Commander-in-Chief in India, or of the general officer of the Command to which he belongs, or of the officer commanding the [2][division, district or brigade] in which he is serving, or, if he belongs to a force not attached to a command, by order of the officer commanding such force:

[3][Provided that, if he is dismissed or discharged by order of an officer not subject to the authority of the Governor General in Council or of the Commander-in-Chief in India, such dismissal or discharge shall

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[1] *See* footnote to Title I, Part II, *supra*.
[2] Substituted for the words "division or district" by s. 2 of the Indian Articles of War (Amendment) Act, 1905 (V of 1905), General Acts, Vol. VI.
[3] This proviso was inserted by the Indian Articles of War Amendment Act, 1901 (IX of 1901), s. 2, General Acts, Vol. V. This Act has been declared in force in the Sonthal Parganas by Regulation III of 1872—*see* Calcutta Gazette, 1902, Pt. I, p. 310.

not take effect until it has been approved by the Governor General in Council or by the Commander-in-Chief in India, or, if he belongs to a command but is serving with a force not attached to a command, by the general officer of the command to which he belongs.]

[1](*2*) Unattested recruits who, in the opinion of their commanding officer, are not likely to make good soldiers, and persons attested under these Articles who are serving in a cavalry corps and who have, in the opinion of their commanding officer, failed to become good riders, shall be liable to discharge from the service by order of the commanding officer of the corps or department to which they may belong:

Provided that, in the case of persons attested under these Articles, this liability shall cease on the completion of their third year of service.

[1](*3*) Every person so dismissed or discharged shall forfeit all claim to pension.

Attested person dismissed or discharged and re-enlisting or making false answer at his attestation.

[2]*Article 5.*—(*1*) Every attested person of or below the rank of non-commissioned officer who has been dismissed or discharged from the service, and who subsequently re-enters the service without at the time stating the fact of his dismissal or discharge, or showing his certificate of dismissal or discharge, may be dismissed the service by the officer commanding the corps or department with which he is serving; and

(*2*) Every attested person of or below the rank of non-commissioned officer who is discovered to have made a wilfully false answer to any question set forth in the attestation paper which has been put to him by, or by direction of, the officer before whom he appears for the purpose of being attested, shall, on conviction by court-martial, be liable to suffer imprisonment (with hard labour and with or without solitary confinement) or such less punishment as is in these Articles mentioned.

Certificate to person dismissed or discharged.

[2] *Article 6.*—Every attested person who is dismissed or discharged from the service, shall be furnished by his commanding officer with a certificate, in the English language and in the mother-tongue of such person (when his mother-tongue is not English), setting forth—

(*a*) the authority dismissing or discharging him;

(*b*) the cause of his dismissal or discharge; and

(*c*) the full period of his service in the army.

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[1] Sub-articles (*2*) and (*3*) were substituted for sub-article (*2*) of article 4 by the Indian Articles of War Amendment Act, 1900 (I of 1900), General Acts, Vol. V.

This Act has been declared in force in the Sonthal Parganas by Regulation III of 1872—*see* Calcutta Gazette, 1901, Pt. I, p. 673.

[2] *See* footnote to Title I, Part II, *supra*.

TITLE II.

MILITARY OFFENCES.

CHAPTER I.

CRIMES PUNISHABLE WITH DEATH OR TRANSPORTATION.

Mutiny and sedition.

Article 7.—Any person subject to these Articles—

who begins, excites, causes or joins in any mutiny or sedition * * * * [1],

or who, being present at any mutiny or sedition, does not use his utmost endeavours to suppress the same,

[2] [or who, knowing or having reason to believe in the existence of any mutiny or sedition, or of any intention to mutiny or create sedition, or of any conspiracy, against the State],

does not, without delay, give information thereof to his commanding or other superior officer;—or

Violence to superior.

Article 8.—Who uses or attempts to use criminal force to, or commits an assault on, his superior officer, whether on or off duty, [3] [knowing or having reason to believe him to be such] ;—or

Disobedience.

Article 9.—Who disobeys the lawful command of his superior officer;—or

Desertion.

[4] *Article 10.*—Who deserts or attempts to desert the service ;—or

Re-enlistment without having been discharged.

[4] *Article 11.*—Who, without having first obtained a regular discharge from the corps or department to which he belongs, enlists or enrols himself in any other corps or department;—or

Sentry sleeping on or quitting post in time of war.

Article 12.—Who, being a sentry in time of war or alarm, or over any State prisoner, treasure, magazine or dockyard, sleeps upon his post, or quits it without being regularly relieved, or without leave;—or

Sentry plundering.

Article 13.—Who, being a sentry, or on guard, plunders or wilfully

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[1] The words " in any regiment, corps, detachment or guard," were repealed by the Indian Articles of War Amendment Act, 1894 (XII of 1894), s. 7, General Acts, Vol. IV.

[2] These words were substituted for the original words, of which they are an amplification, by Act XII of 1894, s. 8, General Acts, Vol. IV.

[3] These words were substituted for the words " under any circumstances in which the superior officer is distinguished as such in any manner," by the Indian Articles of War Amendment Act, 1894 (XII of 1894), s. 9, *ibid.*

[4] These articles were substituted for the original articles 10 and 11 ,respectively, by Act XII of 1894, s. 10, *ibid.* Article 10 was originally as follows :—" Who deserts the service," and article 11 as follows :—" Who, without having first obtained a regular discharge from the regiment or corps to which he belongs, enlists or enrols himself in any other regiment or corps ".

destroys or injures any property placed under his charge, or under charge of his guard ;—or

Article 14.—Who shamefully abandons or delivers up any garrison, fortress, post or guard committed to his charge, or which it is his duty to defend ;—or Abandoning garrison.

Article 15.—Who treacherously makes known the watchword to any person not entitled to receive it according to the rules and discipline of war ;—or Betraying watchword.

Article 16.—Who directly or indirectly holds correspondence with, or communicates intelligence to, the enemy, or any person in arms against the State, or who, coming to the knowledge of any such correspondence or communication, omits to discover it immediately to his commanding or other superior officer ;—or Corresponding with enemy.

Article 17.—Who directly or indirectly assists or relieves with money, victuals or ammunition, or knowingly harbours or protects any enemy, or person in arms against the State ;—or Assisting enemy.

Article 18.—Who, without proper authority, releases any State prisoner, enemy or person taken in arms against the State, placed under his charge, or who negligently suffers any such prisoner, enemy or person to escape ;—or Releasing prisoners.

Article 19.—Who, in presence of an enemy, or of any persons in arms against whom it is his duty to act, shamefully casts away his arms or ammunition, or intentionally uses words or any other means to induce any officer or soldier to abstain from acting against the enemy, or to discourage such officer or soldier from acting against the enemy, or who otherwise misbehaves ;—or Misbehaviour in presence of enemy.

Article 20.—Who, in time of action, without authority, leaves his commanding officer, or his post, or colours, or party to go in search of plunder ;—or Seeking plunder during action.

Article 21.—Who, in time of war, quits his guard, picquet, party or patrol, without being regularly relieved or without leave ;—or Quitting guard in time of war.

Article 22.—Who, in time of war, or during any military operation, uses criminal force to, or commits an assault on, any person bringing provisions or other necessaries to the camp or quarters of any of Her Majesty's forces, Assaulting persons bringing provisions.

or forces a safeguard, or, without authority, breaks into any house or other place for plunder; or plunders, injures or destroys any field, garden or other property of any kind ;—or

Article 23.—Who, in time of war, or, during any military operation, intentionally occasions a false alarm in action, camp, garrison or quarters, or spreads reports by words or by letters calculated to create alarm or despondency. Causing false alarm in time of war.

(*Part II.—The Articles of War. Title II.—Military Offences. Chapter I.—Crimes punishable with Death or Transportation. Chapter II.—Crimes punishable otherwise than by Death or Transportation.*)

Punishment for the foregoing offences.

Article 24.—Shall, on conviction, suffer death, or transportation for life or for a term of not less than seven years,

or imprisonment (with or without hard labour, and with or without solitary confinement) for a term which may extend to fourteen years,

or such other punishment as a general court-martial is, by these Articles, empowered to award.

[1] Whenever any person is convicted of an offence specified in Article 7 and punishable with death under this Article, all his property, moveable and immoveable, shall be forfeited to the Government.

CHAPTER II.

Crimes Punishable otherwise than by Death or Transportation.

Unbecoming behaviour.

[2]*Article 25.*—Any officer, medical subordinate or warrant officer who behaves in a manner unbecoming his position and character ;—and

any person subject to these Articles—

Intoxication on duty.

[2]*Article 26.*—Who is in a state of intoxication when on or after having been warned for any duty, or on parade, or on the line of march ;—or

Striking sentry.

Article 27.—Who strikes, or forces or attempts to force, any sentry ;—or

Harbouring deserter.

Article 28.—Who knowingly harbours any deserter; or who, knowing, or having reason to believe, that any other person has deserted, or that any deserter has been harboured by any other person, does not immediately give notice to his own or some other superior officer, or use his utmost endeavours to cause such deserter to be apprehended ;—or

Enlisting deserter.

Article 29.—Who knowing, or having reason to believe, that a person is a deserter enlists him ;—or

Absence without leave.

Article 30.—Who absents himself without leave, or, without sufficient cause, overstays leave granted to him ;—or

Failure to rejoin.

[3] *Article 31.*—Who, being on leave of absence and having received information from proper authority that his corps or department has been

[1] This paragraph was substituted for the original paragraph by the Indian Articles of War Amendment Act, 1894 (XII of 1894), s. 11, General Acts, Vol. IV.

[2] These articles were substituted for the original articles 25 and 26, respectively, by Act XII of 1894, s. 12, General Acts, Vol. IV. In article 25 the term " medical subordinate " has taken the place of the words " sub-assistant surgeon, hospital assistant, native doctor ". In article 26, the words " having been warned " have been inserted before the words " for any duty ".

[3] This article was substituted for the original article 31 by the Indian Articles of War Amendment Act, 1894 (XII or 1894), s. 13, *ibid.* The articles are the same save that the words " corps or department " were substituted for the words "regiment or corps."

ordered on service, fails, without sufficient cause, to rejoin without delay ;—or

Failure to attend parade.

Article 32.—Who, without sufficient cause, fails to appear at the time fixed at the parade or place appointed for exercise or duty ;—or

Quitting parade or division.

Article 33.—Who, when on parade, or on the line of march, without sufficient cause, or without leave from his superior officer, quits the parade or line of march ;—or

Quitting guard in time of peace.

Article 34.—Who, in time of peace, quits his guard, picquet or patrol, without being regularly relieved, or without leave ;—or

Refusing to receive or releasing prisoners.

Article 35.—Who, being in command of a guard, picquet or patrol, refuses to receive any prisoner duly committed to his charge, or without proper authority releases any prisoner, or negligently suffers any prisoner to escape ;—or

Leaving arrest.

Article 36.—Who, being under arrest or in confinement, leaves his arrest or confinement before he is set at liberty by proper authority ;—or

Insubordination.

Article 37.—Who is grossly insubordinate or insolent to his superior officer in the execution of his office ;—or

Refusal to superintend military works.

Article 38.—Who refuses to superintend or assist in the making of any field-work, or other military work of any description, ordered to be made either in quarters or in the field ;—or

Impeding provost-marshal.

[1] *Article 39.*—Who impedes a provost-marshal or an assistant provost-marshal, or any officer or non-commissioned officer or other person legally exercising authority under or on behalf of a provost-marshal, or, when called on, refuses to assist, in the execution of his duty, the provost-marshal, assistant provost-marshal, or any such officer, non-commissioned officer or other person ;—or

Striking subordinates.

Article 40.—Who strikes or otherwise ill-treats any soldier or other person [2] [enrolled or] attested under these Articles being his subordinate in rank or position ;—or

Extortion.

Article 41.—Who commits extortion; or, without proper authority, exacts from any person carriage, porterage or provisions ;—or

House-breaking or plundering in time of peace.

Article 42.—Who, in time of peace, commits house-breaking for the purpose of plundering; or plunders, destroys or damages any field, garden or other property;—or

Neglecting to compensate person injured by subordinate.

Article 43.—Who, being in command at any post, or on the march, and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due

[1] This article was substituted for the original article 39 by Act XII of 1894, s. 14, General Acts, Vol. IV.
[2] These words were inserted by Act XII of 1894, s. 15, General Acts, Vol. IV.

reparation made to the injured person, or to report the case to the proper authority;—or

Defiling places of worship.

Article 44.—Who, by defiling any place of worship, or otherwise, intentionally insults the religion or wounds the religious feelings of any person;—or

Taking bribes.

Article 45.—Who, directly or indirectly, requires, accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enlistment or enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service;—or

Causing false alarm in time of peace.

Article 46.—Who, in time of peace, by any means whatever, intentionally occasions a false alarm in camp, garrison or cantonment;—or

Making away with regimental necessaries.

[1] *Article 47.*—Who—

(*a*) designedly or through neglect kills, injures, makes away with or loses his horse or ill-treats any animal used in the public service;—or

(*b*) dishonestly or fraudulently removes, conceals or delivers to any person, or designedly or through neglect injures or loses his arms, clothes, tools, musical or surgical instruments, equipments, ammunition, accoutrements or regimental necessaries, or any such articles entrusted to him or belonging to any other person;—or

(*c*) sells, pawns, destroys or defaces any medal or decoration granted to him by order of Her Majesty or of the Governor General in Council for service in the field or for general good conduct;—or

Attempting suicide.

Article 48.—Who attempts to commit suicide and does any act towards the commission of such offence;—and

Appearing armed in camp.

Article 49.—Any person subject to these Articles below the rank of warrant officer—

who, when off duty, appears, without proper authority, in or about camp or cantonments, or in or about, or when going to or returning from, any town or bázár, carrying a sword, bludgeon or other offensive weapon;—or

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[1] This article was substituted for the original article 47 by the Indian Articles of War Amendment Act, 1894 (XII of 1894), s. 16, General Acts, Vol. IV.

(Part II.—The Articles of War. Title II.—Military Offences. Chapter II.—Crimes punishable otherwise than by Death or Transportation. Chapter III.—Crimes to be punished with Dismissal from the Service.)

Article 50.—Who, being a sentry, in time of peace sleeps upon his post, or leaves it before being regularly relieved, or without leave;—or

Sentry sleeping on post in time of peace.

Article 51.—Who, without proper authority, is found two miles or upwards from camp;—or

Absence from camp.

Article 52.—Who, without proper authority, is absent from his cantonment or lines after tattoo, or from camp after retreat-beating;

Absence from cantonment after tattoo.

Article 53.—Shall, on conviction by any court-martial competent to try him, be sentenced to such punishment, other than death or transportation, as such court is, by these Articles, empowered to award.

Punishment for offences mentioned in articles 25—52.

CHAPTER III.

Crimes to be Punished with Dismissal from the Service.

Article 54.—Any person subject to these Articles—

Embezzlement.

who dishonestly misappropriates or converts to his own use any money, provisions, forage, arms, clothing, ammunition, tools, instruments, equipments or military stores of any kind, the property of Government, entrusted to his charge on the public account, or for any military purpose,

or who dishonestly uses or disposes of such property in violation of any direction of a proper authority,

or who dishonestly receives or retains any such property, knowing or having reason to believe the same to have been dishonestly misappropriated or converted;—or

Article 55.—Who wilfully destroys or injures any property of Government entrusted to him on the public account, or for any military purpose;—or

Destruction of Government property.

Article 56.—Who, having been duly sworn or affirmed before any court-martial, or other military court competent to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true:—

Giving false evidence.

[1] *Article 57.*—Shall, if convicted by a general court-martial, be sentenced to be dismissed the service and to forfeit any arrears of pay and allowances due to him at the time of dismissal, and shall be punishable

Punishment for offences mentioned in articles 54, 55 and 56.

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[1] This article was substituted for the original article 57 by the Indian Articles of War Amendment Act, 1894 (XII of 1894), s. 17, General Acts, Vol. IV.

also with imprisonment (with or without hard labour, and with or without solitary confinement) for a term which may extend to two years: and shall, if convicted by a district court-martial, be liable to any or all of the penalties which such court is competent to inflict.

CHAPTER IV.

Disgraceful Conduct.

Malingering.

Article 58.—Any person subject to these Articles—

Who malingers, or feigns, or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity;—or

Wilfully causing hurt.

Article 59.—Who, with intent to render himself or any other person unfit for service, voluntarily causes hurt or voluntarily causes grievous hurt to himself or any other person;—or

Theft.

Article 60.—Who commits theft in respect of any property of Government, or of any officer or soldier, or of any other person in the service, or of any military mess or band, or of any person serving with or attached to the Army, or who dishonestly receives or retains any such property, knowing or having reason to believe it to be stolen;—or

Embezzlement of Government property not entrusted on public account.

Article 61.—Who dishonestly misappropriates or converts to his own use any property of Government entrusted to him for any purpose not provided for in articles 54 and 55,

or who dishonestly receives or retains any such property knowing or having reason to believe it to have been dishonestly misappropriated or converted;—or

Obtaining pension by false statement.

Article 62.—Who obtains or attempts to obtain for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he knows or has reason to believe to be false, or does not know to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement;—or

Furnishing false returns.

Article 63.—Who knowingly furnishes a false return or report of the number or state of any men under his command or charge, or of any money, arms, ammunition, clothing, equipments, stores or other property in his charge, whether belonging to such men, or to Government, or to any person in or attached to the Army, or who, through design or culpable neglect, omits or refuses to make or send any return or report of the matters aforesaid:—or

(*Part II.—The Articles of War. Title II.—Military Offences. Chapter IV.—Disgraceful Conduct. Chapter V.—Offences against Courts-martial. Chapter VI.—Unspecified Offences.*)

Article 64.—Who does any other thing with intent to defraud, or to cause wrongful gain to one person, or wrongful loss to another person; —or

Other fraudulent offences.

Article 65.—Who commits any * * [1] offence of a cruel, indecent or unnatural kind, or attempts to commit any such offence and does any act towards its commission,—

Cruelty or indecency.

[2]*Article 66.*—Shall, on conviction by a general or district court-martial, be liable to any or all of the punishments, other than death or transportation, which the court-martial is competent to award.

Penalties for offences specified in articles 58 to 65.

CHAPTER V.

Offences against Courts-martial.

Article 67.—Any person subject to these Articles who, when duly summoned to attend as a witness before a court-martial, intentionally omits to attend, or refuses to be sworn or make affirmation, or to answer any question, or to produce or deliver up any book or document which he may have been duly warned and called upon to produce or deliver up, or prevaricates;—or

Refusal to attend or be sworn.

Article 68.—Who intentionally offers any insult or causes any interruption or disturbance to, or uses any menacing or disrespectful word, sign or gesture, or is insubordinate or violent in the presence of a court-martial while sitting;—

Contempts.

Article 69.—Shall, on conviction by the same or by any other court-martial which is competent to try the offender, be liable to [3] [any or all of the punishments, other than death or transportation, which the court-martial is competent to award].

Punishment for offences specified in articles 67 and 68.

CHAPTER VI.

Unspecified Offences.

Article 70.—All offences not punishable with death, all neglects to

Unspecified offences.

[1] The word "other" was repealed by the Indian Articles of War Amendment Act, 1894 (XII of 1894), s. 18, General Acts, Vol. IV.

[2] This article was substituted for the original article 66 by Act XII of 1894, s. 19, General Acts, Vol. IV. The original article was as follows:—"May be tried for disgraceful conduct and shall, on conviction by a general, district or garrison court-martial, be liable to any or all of the penalties awardable by such court for disgraceful conduct."

[3] These words were substituted for the words "such punishments as the convicting court is, by these Articles, empowered to award," by Act XII of 1894, s. 20, *ibid.*

obey any garrison or other orders, and all acts and omissions, of which any person subject to these Articles is accused, shall, though not specified in these Articles, if they be prejudicial to good order and military discipline, be taken cognizance of and punished according to the nature and degree of the offence, act or omission by any court-martial empowered to try the person guilty of such offence, act or omission.

Abetment.

[1] *Article 71.*—Every person who abets, within the meaning of the Indian Penal Code, [2] any offence punishable under these Articles may be punished with the punishment hereinbefore provided in these Articles for such offence. XLV of 1860.

TITLE III.

JURISDICTION.

CHAPTER I.

COURTS-MARTIAL.

Courts-martial and the kinds thereof.

[3] *Article 72.*—For the purposes of these Articles, there shall be five kinds of courts-martial, that is to say—

(1) General courts-martial.	Hereinafter called ordinary courts-martial.
(2) District courts-martial.	
(3) Regimental courts-martial.	
(4) Summary general courts-martial.	Hereinafter called extraordinary courts-martial.
(5) Summary courts-martial.	

[4] *Ordinary Courts-martial.*

Power to convene ordinary courts-martial.

[4] *Article 73.*—(*1*) The following authorities shall have power to convene general or district courts-martial, namely:—

(*a*) the Commander-in-Chief in India,

(*b*) the general officer of the Command,

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[1] This article was substituted for the original article 71 by Act XII of 1894, s. 21, General Acts, Vol. IV.

[2] General Acts, Vol. I.

[3] This article was substituted for the original article 72 by the Indian Articles of War Amendment Act 1894 (XII of 1894), s. 22, General Act, Vol. IV.

[4] This heading and the articles 73 and 74 here printed were substituted for the original articles 73 and 74 by Act XII of 1894, s. 23, General Acts, Vol. IV.

(*c*) any officer empowered in that behalf by warrant of the Commander-in-Chief in India or the general officer of the Command.

(*2*) [1]The power of convening general or district courts-martial may be granted under clause (*1*), sub-clause (*c*), subject to such restrictions, reservations, exceptions and conditions as the Commander-in-Chief in India or the general officer of the Command granting the power may think fit.

(*3*) Any warrant under this Article for convening general or district courts-martial, or either of them, may be addressed to an officer by name, or by designation of his office, or partly in one way and partly in the other, and may or may not, according to the terms thereof and the mode in which it is addressed, be limited to an officer named or be extended to any person for the time being performing the duties of such officer, or to the successors in command of such officer.

Composition of general courts-martial.

[2]*Article 74.*—A general court-martial shall, if held in British India, consist of not less than seven officers, unless that number, due regard being had to the public service, is not available, in which case the court may consist of not less than five officers.

Article 75.—[*Composition of General Court-martial appointed under Order in Council.*] *Repealed by Act XII of 1894, s. 24.*

Powers of such court.

Article 76.—A general court-martial shall have power to try all persons subject to these Articles accused of mutiny or of any other offence punishable under this Act, and to pass sentences of—

Death,

Transportation for life or for any period not less than seven years,

Imprisonment (with or without hard labour, and with or without solitary confinement) for any term not exceeding fourteen years,

Dismissal from the service,

Suspension from rank, pay and allowances for any stated period,

Degradation,

Loss of standing,

[3][Reduction to a lower grade or to the ranks,]

Corporal punishment not exceeding fifty lashes,

Forfeiture of additional pay, good-conduct pay, and claim to pension,

Forfeiture of arrears of pay and allowances,

Stoppages.

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[1] For notification issued under this power, *see* Gazette of India, 1878, Pt. i, p. 293.

[2] *See* first footnote on p. 56, *supra*.

[3] These words were substituted for the words "reduction to the ranks" by the Indian Articles of War Amendment Act, 1894 (XII of 1894), s. 25, General Acts, Vol. IV.

Whenever any person is convicted of any offence for which he shall be transported or sentenced to imprisonment for a term of seven years or upwards, the court may adjudge that all the rents and profits of his moveable and immoveable estate during the period of his transportation or imprisonment shall be forfeited to Government, subject to such provision for his family and dependents as the Government may think fit to allow during such period.

Articles 77 to 79.—[*Appointment, composition and powers of Detachment General Court-martial; appointment of District Court-martial and Garrison Court-martial.*] *Repealed by Act XII of 1894, s. 24.*

Composition of district court-martial.

[1]*Article 80.*—A district court-martial shall consist of not less than five officers, unless that number, due regard being had to the public service, is not available, in which case the court may consist of not less than three officers.

Officers composing such courts.

[1]*Article 81.*—A district court-martial may, when necessary, be composed wholly of officers of the corps or department to which the accused belongs.

Powers of such courts.

Article 82.—A district * * *[2] court-martial shall have power to try all persons subject to these Articles, other than commissioned officers, for any offence * * *[2] made punishable by these Articles, and to pass sentences of—

Imprisonment (with or without hard labour, and with or without solitary confinement) for a term not exceeding [3][two years],

Dismissal from the service,

Suspension from rank, pay and allowances,

Degradation,

Loss of standing,

[4][Reduction to a lower grade or to the ranks,]

Corporal punishment not exceeding fifty lashes,

Forfeiture of additional pay, good-conduct pay and claim to pension,

Forfeiture of arrears of pay and allowances,

Stoppages.

Convening order to state if larger num-

[5]*Article 82A.*—Whenever a general or district court-martial is ordered to be composed of the smaller number of officers specified in article 74 or 80, the order convening the court shall expressly state that the

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[1] These articles were substituted for the original articles 80 and 81, respectively, by Act XII of 1894, s. 26, General Acts, Vol. IV.

[2] The words " or garrison " and " other than mutiny " were repealed by Act XII of 1894, s. 27.

[3] These words were substituted for the words " one year " by Act XII of 1894, s. 28.

[4] These words were substituted for the words " reduction to the ranks " by the Act XII of 1894, s. 28.

[5] Articles 82A was inserted by Act XII of 1894, s. 29.

larger number of officers is not, due regard being had to the public service, available; and that statement shall be conclusive evidence of the fact so stated. ber of officers is not available.

[1]*Article 83.*—A regimental court-martial may be appointed by the officer commanding any corps or department or detachment thereof or by any officer when in command of two or more corps or departments or detachments thereof. Appointment of regimental court-martial.

[1]*Article 84.*—A regimental court-martial shall consist of not less than three officers. Composition of regimental court-martial.

[1]*Article 85.*—A regimental court-martial shall have power to try all persons subject to these Articles and not above the rank of non-commissioned officer— Powers of such court.

(*a*) for any offence triable by a court-martial under these Articles except an offence punishable under articles 7 to 23 (both inclusive), articles 54 to 65 (both inclusive), or articles 171 to 173 (both inclusive), and,

(*b*) with the previous sanction of the prescribed authority, for any of the offences so excepted.

[1]*Article 85A.*—A regimental court-martial shall have power to pass any sentence which might have been passed by a district court-martial for the like offence other than suspension from rank, pay and allowances: Powers as to sentences of such courts.

Provided that no sentence of imprisonment for a term exceeding six months, nor any of the additional punishments specified in article 135, shall be passed by a regimental court-martial.

[2]*Article 86.*—(*1*) The officers composing a court-martial convened under the foregoing provisions shall, except as hereinafter provided, be Native officers. Native and British officers when to be nominated.

(*2*) The Governor General in Council, or the Commander-in-Chief in India or the general officer of the Command, or any officer empowered in that behalf by warrant of the Commander-in-Chief in India or the general officer of the Command, may direct that any court-martial convened under these Articles shall be composed of British instead of Native officers.

(*3*) Any person subject to these Articles, who is under orders for trial by any court-martial, may claim to be tried by British officers.

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[1] The articles 83 to 85A here printed were substituted for the original articles 83 to 85 by Act XII of 1894, s. 30.

[2] The articles 86 to 89B here printed were substituted for the original articles 86 to 89 by the Indian Articles of War Amendment Act, 1894 (XII of 1894), s. 31.

(*4*) In all cases the right of making such a claim shall, before the court is convened, be explained to the person under orders for trial by the commanding officer, or some officer deputed by him in this behalf, and, when such a claim is made, the court shall be constituted accordingly.

(*5*) A court-martial convened for the trial of any person subject to these Articles, and serving with any British corps or detachment, may be composed of British officers if, in the opinion of the officer convening the court (such opinion to be expressed in the order convening the court and to be conclusive), Native officers are not available with due regard to the public service for service on the court.

Judge advocate and appointment of superintending officer for Native court-martial.

[1] *Article 87.*—(*1*) Every general court-martial shall be attended by a judge advocate.

(*2*) if no officer of the judge advocate general's department is available, the officer convening the court shall appoint a fit person to act as judge advocate at the trial.

(*3*) No person under orders for trial or under trial by any court-martial may, without the leave of the court, object to any person acting or professing to act as judge advocate.

(*4*) A British officer of not less than four years' service, hereinafter called the superintending officer, shall be appointed to superintend the proceedings of every court-martial composed of Native officers which is not attended by a judge advocate.

President.

[1] *Article 88.*—(*1*) At every court-martial the senior officer shall sit as president without special appointment as such.

(*2*) In case of the death or unavoidable absence of the president, the next senior officer shall take the place of the president, without special appointment as such, and the trial shall proceed if the court is still composed of not less than the smallest number of officers of which it is required by these Articles to consist.

Finding and sentence invalid without confirmation.

[1] *Article 89.*—No finding or sentence of a general, district or regimental court-martial shall be valid, except so far as it may be confirmed as provided by these Articles.

By whom findings and sentences may be confirmed or otherwise disposed of.

[1] *Article 89A.*—(*1*) The following authorities shall have power to confirm the findings and sentences of general and district courts-martial:—

(*a*) the Commander-in-Chief in India;

(*b*) the general officer of the Command, as regards troops under his command wherever stationed;

(*c*) the officer commanding a force not attached to a Command;

[1] *See* second footnote on preceding page.

(*d*) any officer empowered in that behalf by warrant of the Commander-in-Chief in India or the general officer of the Command;

[1][(*e*) in the case of any person subject to these Articles, who is serving out of India, not under the orders of the Commander-in-Chief in India, in any station beyond the seas as defined in section 190, clause (25), of the Army Act, the officer who convenes the court-martial or who has authority to convene such court-martial]:

44 & 45 Vict., c. 58.

Provided that, except on active service or beyond the limits of India, no warrant issued under this article shall be deemed to empower an officer to confirm any finding or sentence in the case of an officer, medical subordinate or warrant officer, or a sentence of death, transportation or imprisonment for a term exceeding seven years in any case whatever.

(*2*) The provisions of article 73, clauses (*2*) and (*3*), shall, with the necessary modifications, apply to warrants issued under this article.

(*3*) The officer who convenes a regimental court-martial or the officer having authority to convene such court-martial, at the date of the submission of the finding and sentence thereof, shall have power to confirm the same.

Power of confirming officer to mitigate, remit or commute sentence.

[2]*Article 89B.*—Subject to such restrictions as may be contained in any warrant issued under the last preceding article, the confirming officer may, when confirming the sentence of a court-martial, mitigate or remit the punishment thereby awarded, or commute that punishment for any less punishment or punishments to which the offender might have been sentenced by the court-martial:

Provided that a sentence of transportation shall not be commuted to a sentence of imprisonment for a term exceeding the term of transportation awarded by the court.

[3]*Extraordinary Courts-martial.*

Convening of summary general courts-martial.

[3]*Article 90.*—The following authorities shall have power to convene a summary general court-martial, and such a court-martial may be convened—

(*a*) in any place, whether within or beyond British India, by an officer empowered in this behalf by an order of the

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[1] This clause was added by s. 2 of the Indian Articles of War (Amendment) Act, 1904 (XIII of 1904), General Acts, Vol. VI.

[2] *See* second footnote on p. 59, *supra*.

[3] This heading and the articles 90 to 97 here printed were substituted for the original heading and articles by Act XII of 1894, s. 32, General Acts, Vol. IV.

Governor General in Council or of the Commander-in-Chief in India or of the general officer of the Command;

(*b*) by an officer commanding any detached portion of Her Majesty's troops upon active service when, in his opinion, it is not practicable, with due regard to discipline and the exigencies of the service, that an offence should be tried by an ordinary general court-martial.

Composition of summary general courts-martial.

[1]*Article 91.*—*[2] A summary general court-martial shall consist of not less than three officers, who may be either British or Native, or both British and Native officers, as the officer convening the court thinks fit.

* * * * * [2]

Powers of a summary general court-martial.

[1] *Article 92.*—A summary general court-martial shall have all the powers of a general court-martial and, subject to any instructions contained in the order convening the court, its sentence shall be valid, and may be carried out forthwith in case it does not exceed that which a district court-martial is empowered to pass, and in any other case when confirmed by the authority convening the court.

Convening and constitution of, and persons triable by, a summary court-martial.

[1] *Article 93.*—(*1*) A summary court-martial may be held—

(*a*) by the commanding officer, being a combatant officer, of any corps or department of Her Majesty's Indian forces, or of any detachment of those forces;

(*b*) by the commanding officer of any British corps or detachment to which Native combatant details subject to these Articles are attached.

(*2*) At every summary court-martial the officer holding the trial shall alone constitute the court, but the proceedings shall be attended throughout by two other officers, British or Native, who shall not, as such, be affirmed or sworn.

(*3*) The proceedings shall be recorded in the English language, and, when closed, shall be signed by the officer holding the trial, and by the officers attending thereat.

(*4*) A summary court-martial may try any person subject to these Articles and under the command of the officer holding the court, except an officer, medical subordinate or warrant officer.

(*5*) Any member of an army hospital corps may be tried by summary court-martial by any officer authorized in this behalf by the officer commanding the division, district, brigade or station to which the alleged offender belongs.

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[1] *See* third footnote on preceding page.

[2] The brackets and figure "(*1*)" in article 91 and sub-article (*2*) of the same article were repealed by s. 3 of the Indian Articles of War (Amendment) Act, 1904 (XIII of 1904), General Acts, Vol. VI.

(*Part II.—The Articles of War. Title III.—Jurisdiction. Chapter I.—Courts-martial. Chapter II.—Procedure.*)

Offences triable by a summary court-martial.

[1] *Article 94.*—A summary court-martial may try any offence punishable under any of these Articles:

Provided that when there is no grave reason for immediate action, and reference can, without detriment to discipline, be made to superior authority, a summary court-martial shall not try without such reference any of the following offences, namely:—

(*a*) any offence punishable under any of the articles 7 to 23 (both inclusive), or articles 54 to 65 (both inclusive), or article 171;

(*b*) any offence against the officer holding the court.

Powers of a summary court-martial.

[1] *Article 95.*—(*1*) A summary court-martial held by the commanding officer of a corps or department may pass any sentence which can be passed under these Articles, except a sentence of death or transportation, or of imprisonment for a term exceeding one year.

(*2*) A summary court-martial held by any other officer may pass any sentence which can be passed under these Articles, except a sentence of death or transportation, or of imprisonment for a term exceeding six months.

Finding and sentence of a summary court-martial.

[1] *Article 96.*—The finding and sentence of a summary court-martial shall not require to be confirmed, but may be carried out at once;

Provided that, if the officer holding the trial is of less than five years' service, he shall not, except on active service, carry into effect any sentence until it has received the approval of a superior military officer commanding not less than a corps.

Transmission of proceedings of summary courts-martial.

[1] *Article 97.*—The proceedings of every summary court-martial shall, without delay, be forwarded to the officer commanding the district, or the division or brigade, within which the trial was held, or to the prescribed officer: and such officer or the Commander-in-Chief in India or the general officer of the Command, or, when the court is held in a force not attached to a Command, the officer commanding the force, may, for reasons based on the merits of the case, but not on any merely technical grounds, set aside the proceedings.

CHAPTER II.

PROCEDURE.

Limitation of trials.

Article 98.—No person subject to these Articles shall be tried or punished by a court-martial for any military offence after the expiration of three years from the date of such offence, unless the offender, by

[1] *See* third footnote on p. 61, *supra*.

reason of absence or of some other manifest impediment, could not be arrested or confined and brought to trial within that period; in which case he shall be liable to be tried at any time not exceeding two years after such impediment shall have ceased.

Place of trial.

Article 99.—Any person subject to these Articles who commits any offence against them may be tried and punished for such offence in any place whatever in the same manner as if the offence had been committed in such place.

Arrest or confinement of accused.

[1] *Article 100.*—(*1*) Whenever any person subject to these Articles is accused of any offence which his commanding or other superior officer considers should be tried by court-martial, such officer shall order the accused to be placed in military custody until he can be tried by a court-martial or is discharged by proper authority.

(*2*) No such person shall be detained in military custody longer than is necessary for the purposes of justice.

Article 101.—[*Judge Advocate.*] *Repealed by Act XII of 1894, section 34.*

Interpreter.

[2] *Article 102.*—(*1*) An interpreter shall be appointed to every court-martial.

(*2*) If no duly qualified interpreter is available at the station or place where the court-martial sits, the officer appointing the court or the officer commanding in the district or place within or at which the trial is to be held, shall appoint any competent person to perform the duty of interpreter.

(*3*) When no other qualified or competent person is available, the superintending officer, or, in the case of an European court, the president, shall perform the duty of interpreter.

(*4*) In the case of a trial by a summary court-martial, the officer holding the trial, or one of the officers in attendance thereat, may perform the duty of interpreter if no other competent interpreter is available.

(*5*) No interpreter shall, as such, have a vote upon any matter.

Dissolution of courts.

[3] *Article 103.*—(*1*) When a court-martial after the commencement of the trial is reduced below the smallest number of officers of which it is by these Articles required to consist, it shall be deemed to be dissolved.

(*2*) If, on account of the illness of the prisoner before the finding, it is impossible to continue the trial, a court-martial shall be dissolved.

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[1] Substituted for the original article 100 by Act XII of 1894, s. 33, General Acts, Vol. IV.

[2] Substituted for the original article 102 by Act XII of 1894, s. 35.

[3] The articles 103 to 103B here printed were substitued for the original article 103 by Act XII of 1894, s. 36.

(*3*) Where a court-martial is dissolved under this article, the prisoner may be tried again.

[1] *Article 103A.*—The president of a court-martial may, on any deliberation among the members, cause the court to be cleared of all other persons. Power to clear court.

[1] *Article 103B.*—The court may, when it thinks fit, view any place. Power to view place.

Article 104.—In the case of any * * * *[2] court-martial composed of European commissioned officers * * * *[2] the president shall conduct the proceedings. Conduct of proceedings.

Article 105.—Risaldar Majors and Subahdar Majors shall take precedence according to the dates of their commissions and above all Subahdars or Risaldars. Precedence of Native officers.

Sirdar Bahadurs and Bahadurs shall take rank only according to their respective commissions of Risaldar Major, Subahdar Major, Risaldar, Risaidar, Subahdar or Jemadar.

Risaldars shall take rank with Subahdars, according to the dates of their commissions as Risaidars, or if they have not been Risaidars then according to the dates of their commissions as Risaldars.

Article 106.—Trials by courts-martial may be carried on at any time without restriction. Time of trial, adjournment and re-assembly.

The date and hour of the court's original assembly shall be fixed by, or under the orders of, the convening officer; but the adjournment and re-assembly of a court-martial shall be determined by the court itself.

Article 107.—At all trials by [3] [ordinary] courts-martial, as soon as the court is assembled, the names of the president and members shall be read over to the prisoner, who shall thereupon be asked by the officer conducting the proceedings, whether he objects to being tried by any officer sitting on the court. Challenges.

If the prisoner objects to any such officer, his objection, and also the reply thereto of the officer objected to, shall be heard and recorded, and the remaining officers of the court shall, in the absence of the challenged officer, decide on the objection.

When no challenge is made, or when challenge has been made and disallowed, or the place of every officer successfully challenged has been

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[1] *See* third footnote on preceding page.

[2] The words " General court-martial appointed under an order in Council, or of any other " after the word " any " and the words and figures " under article 96 or 97 " after the word " officers " were repealed by Act XII of 1894, s. 37.

[3] The word " ordinary " was substituted for the words " courts-martial, other than court-martial appointed under an order in Council or summary," by Act XII of 1894, s. 38

filled by another officer to whom no objection is made or admitted, the court shall proceed as hereinafter provided.

Interpreter's oath

Article 108.—The officer conducting the proceedings shall then administer to the interpreter, or, when necessary, shall himself make as interpreter an affirmation or oath as follows:—

"I solemnly affirm, in the presence of Almighty God, that I will faithfully interpret and translate the proceedings of this court; and that I will not divulge the sentence until it shall have been published by authority; and further, that I will not disclose or discover the vote or opinion of any particular member of the court unless required to give evidence thereof by a court of justice or court-martial, in due course of law."

When oath is made instead of affirmation, the oath shall commence—

"I do swear that I will faithfully interpret," etc., and shall be in all other respects in the above form, and shall end with the words "So help me God."

Affirmation or oath of interpreter.[1]

[1] *Article 108A.*—At a summary court-martial the interpreter shall make affirmation or oath down to the words "published by authority" only.

Oaths of president and members.

Article 109.—The interpreter, or the officer conducting the proceedings, shall then administer to the president and each of the members of the court-martial an affirmation or oath in such of the following forms as shall be appropriate:—

For European Officers.

"I solemnly affirm, in the presence of Almighty God, that I will duly administer justice, according to the Indian Articles of War, without partiality, favour or affection; and if any doubt shall arise, then, according to my conscience, the best of my understanding, and the custom of war in the like cases; and that I will not divulge the sentence of the court until it shall be published by authority; and, further, that I will not disclose or discover the vote or opinion of any particular member of the court, unless required to give evidence thereof by a court of justice or a court-martial, in due course of law."

When oath is made instead of affirmation, the oath shall commence—

"I do swear that I will duly administer justice," etc., and shall be in all other respects in the above form, and shall end with the words "So help me God."

[1] Article 108A was inserted by the Indian Articles of War Amendment Act, 1894 (XII of 1894), s. 39, General Acts, Vol. IV.

For Native Officers of the Mussulman or Hindu religion, or of any other religion for which it may be appropriate.

"I solemnly affirm, in the presence of Almighty God, that I will duly administer justice according to the Indian Articles of War, without partiality, favour or affection; and if any doubt shall arise, then, according to my conscience, the best of my understanding, and the custom of war in the like cases; and that I will not divulge the sentence of the court until it shall be published by authority; and, further, that I will not disclose or discover the vote or opinion of any particular member of the court, unless required to give evidence thereof by a court of justice or a court-martial, in due course of law."

Judge Advocate's oath.

Article 110.—The interpreter, or any other European officer of the court, shall then administer to the judge advocate, or superintending officer, the following affirmation or the following oath:—

"I solemnly affirm in the presence of Almighty God, that I will not, upon any account whatsoever, disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof as a witness by a court of justice or a court-martial, in due course of law; and that I will not, unless it be necessary for the due discharge of my official duties, disclose the sentence of the court until it shall be published by authority."

When oath is made instead of affirmation, the oath shall commence—

"I do swear that I will not, upon any account whatsoever, disclose," etc., and shall be in all other respects in the above form, and shall end with the words "So help me God."

Oaths of witnesses.

Article 111.—Every person giving evidence at a court-martial shall be examined on oath, or on affirmation where affirmation is appropriate and admissible, and shall be duly sworn or affirmed in such of the following forms as may be appropriate:—

For Europeans and persons professing the Christian religion.

"I do swear that what I shall state shall be the truth, the whole truth, and nothing but the truth. So help me God."

or,

"I solemnly affirm, in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth."[1]

For Mussulman, Hindu or other Native Witnesses.

"I solemnly affirm, in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth."[2]

Oaths to be binding on conscience.

Article 112.—If none of the forms of oath or affirmation prescribed in articles 108 to 111, both inclusive, are appropriate to any officer of a court-martial or any witness, such officer or witness shall make oath or affirmation to the purport hereinbefore prescribed, in such form as the court ascertains to be according to his religion or otherwise binding on his conscience.

Re-swearing in case of several trials.

Article 113.—When more trials than one are held by the same court-martial, every officer of the court and every witness before the court shall make a fresh oath or affirmation, as hereinbefore prescribed, notwithstanding any previous oath or affirmation.

Article 114.—[*Presumptive evidence of desertion.*] *Repealed by Act XII of 1894, s. 40.*

Reference by prisoner to Government officer.

Article 115.—If at any trial for desertion, absence without leave, overstaying leave, or not rejoining when warned for service, the person tried states in his defence any sufficient or reasonable excuse for his unauthorized absence, and refers in support thereof to any officer in the civil or military service of Government, or if it appears that any such officer is likely to prove or disprove the said statement in the defence, the court shall address such officer and adjourn until his reply is received.

The written reply of any officer so referred to shall, if signed by him, be received in evidence, and have the same effect as if made on oath or affirmation before the court.

If the court is dissolved before the receipt of such reply, or if the court omits to comply with the provisions of this article, the convening officer may, at his discretion, annul the proceedings and order a fresh trial by the same or another court-martial.

Conviction of one offence permissible on charge of another.

[1]*Article 116.*—(*1*) A prisoner charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

(*2*) A prisoner charged before a court-martial with attempting to desert may be found guilty of desertion or of being absent without leave.

(*3*) A prisoner charged before a court-martial with any one of the following offences, that is to say, theft, dishonest misappropriation or conversion, criminal breach of trust, or dishonestly receiving or retaining stolen property, may be found guilty of any other of those offences.

(*4*) A prisoner charged before a court-martial with any other offence under these Articles may, on failure of proof of an offence having been

[1] This article was substituted for the original article 116 by the Indian Articles of War Amendment Act, 1894 (XII of 1894), s. 41.

committed under circumstances involving a more severe punishment, be found guilty of the same offence as having been committed under circumstances involving a less severe punishment.

Evidence of previous convictions and general character.

[1]*Article 117.*—(*1*) When any person subject to these Articles has been convicted by a court-martial of any offence, such court-martial shall enquire into, and receive and record evidence of, any previous convictions of such person, either by a court-martial or by a criminal court, and shall further enquire into and record the general character of such person.

(*2*) Evidence received under this article may be either oral, or in the shape of entries in, or certified extracts from, court-martial books or other official records; and it shall not be necessary to prove the signature to such certified extracts, nor shall it be necessary to give notice before trial to the person tried that evidence as to his previous convictions or character will be received.

(*3*) At a summary court-martial the commanding officer holding the trial may, if he thinks fit, record any previous convictions against the offender and his general character, as of his own knowledge, instead of requiring them to be proved under the foregoing provisions of this article.

General rule as to evidence.

[1]*Article 117A.*—Subject to the provisions of the last foregoing article, the Indian Evidence Act, 1872,[2] subject to such modifications thereof and to such additional rules of evidence as the Governor General in Council may, by notification, direct, shall apply to all proceedings before a court-martial.

I of 1872.

Voting of members.

Article 118.—The members of a court-martial shall preserve order; and, in giving their votes upon any matter, shall begin with the junior in rank.

Except where otherwise specially provided, every decision shall be passed by a majority of votes; and where there is an equality of votes, as to either finding or sentence, the decision shall be in favour of the person tried.

In matters other than the finding or sentence, the president shall have a casting vote.

Majority requisite to sentence of death.

[3]*Article 119.*—No sentence of death shall be passed by any court-martial without the concurrence of two-thirds at the least of the members of the court.

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[1] The articles 117 and 117A here printed were substituted for the original article 117 by Act XII of 1894, s. 42.

[2] For Act I of 1872, *see infra*.

[3] This article was substituted for the original article 119 by Act XII of 1894, s. 43.

Revision of finding or sentence.

[1]*Article 120.*—(*1*) The finding or sentence of any court-martial may be once revised by order of the officer authorized to dispose of the proceedings, and, on such revision, the court, if so directed by him, may take additional evidence.

(*2*) The court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers shall be unavoidably absent.

(*3*) In case of such unavoidable absence, the cause thereof shall be duly certified in the proceedings, and the court shall proceed with the revision, provided it still consists of the smallest number of officers of which such court is by these Articles required to consist.

Procedure to be generally followed.

Article 121.—The procedure laid down in the articles 106 to 119 (both inclusive) shall be adopted at all trials by courts-martial save when otherwise specially ordered or provided.

Summoning witnesses, and production of documents.

[2]*Article 122.*—(*1*) The judge advocate in the case of a general court-martial, and the officer ordering the trial in the case of any other court-martial, may, by summons under his hand, require the attendance before the court, at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or other thing.

(*2*) In the case of a witness amenable to military authority, the summons shall be sent to the officer actually commanding the corps, department or detachment to which he belongs, and such officer shall serve it upon him accordingly.

(*3*) In the case of any other witness, the summons shall be sent to the magistrate within whose jurisdiction he may be or reside, and such magistrate shall give effect to the summons as if the witness were required in the court of such magistrate.

(*4*) When a witness is required to produce any particular document or other thing in his possession or power, the summons shall describe it with convenient certainty.

(*5*) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872,[3] sections 123 and 124, or to apply to any letter, post-card, telegram or other document in the custody of the postal or telegraph authorities. I of 1872.

(*6*) If any document in such custody is, in the opinion of any district magistrate, chief presidency magistrate, high court or court of session, wanted for the purposes of any court-martial, such magistrate or

[1] This article was substituted for the original article 120 by the Indian Articles of War Amendment Act, 1894 (XII of 1894), s. 43.
[2] This article was substituted for the original article 122 by Act XII of 1894, s. 44.
[3] *Infra.*

court may require the postal or telegraph authorities, as the case may be, to deliver such document to such person as such magistrate or court may direct.

(*7*) If any such document is, in the opinion of any other magistrate or of any commissioner of police or district superintendent of police, wanted for any such purpose, he may require the postal or telegraph department, as the case may be, to cause search to be made for and to detain such document pending the orders of any such district magistrate, chief presidency magistrate or court.

Contempts of court.

[1]*Article 123.*—(*1*) Any witness duly summoned, and any person who commits any contempt of court in the presence of a court-martial, or any offence described in article 56, 67 or 68, shall, if subject to these Articles, be proceeded against as the court may direct.

(*2*) If any such witness or person is not so subject, the president of the court-martial may certify the offence under his hand to the court of any magistrate within the local limits of whose jurisdiction it was committed, and the magistrate, may thereupon take cognizance of the case, and, after hearing anything which the accused may desire to say, dispose of it as if the offence had been committed in a proceeding in the court of such magistrate.

Privileges of persons attending courts-martial.

[1]*Article 124.*—(*1*) No president or member of a court-martial, no judge advocate or superintending officer, no party to any proceeding before a court-martial, or his legal practitioner or agent, and no witness acting in obedience to a summons to attend a court-martial, shall, while proceeding to, attending on or returning from, a court-martial, be liable to arrest under civil or revenue process.

(*2*) If any such person is arrested under any such process, he may be discharged by order of the court-martial.

Articles 125 to 129.—[*Summary courts-martial; signature and transmissions of proceedings.*] *Repealed by Act XII of 1894, s. 45.*

CHAPTER III.

SENTENCES.

Sentences of general courts-martial.

Article 130.—(*a*) Any general court-martial may for any offence falling under articles 7 to 23, both inclusive, and for such offences only, sentence any person subject to its jurisdiction to death, or to transportation for life, or for any period not less than seven years, or to imprison-

[1] These articles were substituted for the original articles 123 and 124 by Act XII of 1894, s. 44.

ment (with or without hard labour, and with or without solitary confinement) for any period not exceeding fourteen years.

(*b*) Any general court-martial may, for any offence falling under article 54, 55 or 56 of these Articles, sentence any person as aforesaid to the penalties attached to such offences in article 57, and may, for any other disgraceful conduct, award the penalties attached to that offence in articles 136, 137 and 138.

(*c*) Any general court-martial may, in any case where no special punishments are prescribed, or, in addition to any special punishment, where so authorized, sentence any person amenable thereto to any punishment specified in articles 131, 132, 133, 135, 137 and 138.

(*d*) No court-martial, other than a general court-martial, shall have power to award a sentence of death, transportation or imprisonment exceeding [1][two years].

Any general court-martial may sentence any commissioned officer to be dismissed the service or to be suspended from rank, pay and allowances for any stated period; or to be placed one or more steps lower in the list of his rank.

No court-martial, other than a general court-martial, shall have power to try or punish a commissioned officer.

Dismissal.

[2]*Article 131.*—Dismissal from the service may accompany any other sentence passed by a court-martial.

Reduction, dismissal, corporal punishment and imprisonment.

Article 132.—Any court-martial may sentence a non-commissioned officer to be reduced [3][to a lower grade or] to the ranks; or to be placed one or more steps lower in the list of his rank;

or may sentence any person subject to these Articles below the rank of warrant officer to be dismissed the service; or to suffer corporal punishment not exceeding fifty lashes; or to imprisonment with or without hard labour, and with or without solitary confinement, for such periods as are hereinafter prescribed.

Solitary confinement.

[4]*Article 133.*—In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and, when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals be-

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[1] These words were substituted for the words " one year " by the Indian Articles of War Amendment Act, 1894 (XII of 1894), s. 46.
[2] This article was substituted for the original article 131 by Act XII of 1894, s. 47.
[3] These words were inserted by Act XII of 1894, s. 48.
[4] This article was substituted for the original article 133 by Act XII of 1894 s. 49.

tween the periods of solitary confinement of not less duration than such periods.

Reduction of non-commissioned officers to ranks.

[1]*Article 134.*—A non-commissioned officer sentenced by court-martial to any of the punishments specified in the second paragraph of article 132 shall be deemed to be reduced to the ranks.

Forfeiture of pay and pension.

[1]*Article 135.*—On a conviction of any offence, a general, summary general or district court-martial may, in addition to any other punishment which it is empowered to award, sentence the offender to forfeit all advantage as to additional pay and claim to pension on discharge which might otherwise have accrued from the length or nature of his former service, or to forfeit all such advantage absolutely, whether it has accrued from former service or may accrue from future service, or to forfeit service for the purpose of promotion, increased pay or pension or any other prescribed purpose, or to forfeit any military decoration or reward.

Stoppage of good-conduct pay on conviction.

[1]*Article 136.*—Whenever a person subject to these Articles is convicted by a court-martial, his good-conduct pay shall, subject to any rules or orders which may from time to time be made with the previous sanction of the Governor General in Council, cease.

Forfeiture of arrears of pay.

[1]*Article 137.*—On a conviction for any offence, if the offender is sentenced to dismissal from the service, or if his sentence involves such dismissal, he may further be sentenced to forfeit, if the court shall so direct,—

(*a*) all or any arrears of pay and allowances or other public money due to him at the time of his dismissal, or

(*b*) such portion thereof as may be required to make good any proved loss or damage arising out of his offence.

Stoppages.

[2]*Article 138.*—* * * * * Any court-martial, in addition to any punishment other than, or not involving, dismissal, may sentence any person as aforesaid to be put under stoppages, to the extent specified in article 139, until any proved loss or damage arising out of his misconduct be made good.

Extent of stoppages.

Article 139.—Stoppages under article 138 shall not be awarded, whether under one or more than one sentence, to a greater extent than [3][one-half of the offender's] monthly pay and allowances, and shall not be so awarded as to extend beyond one year.

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[1] These articles were substituted for the original articles 134 to 137, respectively, by Act XII of 1894, s. 49.

[2] The first paragraph and the word " and " at the beginning of the second paragraph were repealed by Act XII of 1894, s. 50.

[3] These words were substituted for the words " in the case of an officer, two-thirds, or in the case of any other person, one-half of his " by the Indian Articles of War Amendment Act, 1894 (XII of 1894), s. 51.

Any public money issued to the offender within the said period of one year shall, for the purposes of this article, be deemed to be pay and allowances.

Sentence of transportation or imprisonment on person already sentenced.

Article 140.—Whenever a sentence of transportation or imprisonment is passed by any court-martial upon an offender already under sentence of transportation for a limited term, or of imprisonment, the court may award transportation or imprisonment to commence on the expiration of such previous sentence; notwithstanding that the aggregate of any terms of imprisonment may thus exceed the limit of imprisonment which such court is by these Articles empowered to award.

Form of sentence of death.

Article 141.—In awarding a sentence of death, a general court-martial shall, at its discretion, direct that the offender shall "suffer death by being hanged by the neck until he be dead," or shall "suffer death by being shot to death."

CHAPTER IV.

Confirmation and Commutation of Sentences.

Articles 142 to 149.—[*Repealed by Act XII of 1894, s. 52.*]

CHAPTER V.

Execution of Sentences.

Transportation.

Article 150.—Whenever the sentence of a general court-martial awarding transportation is duly confirmed, or whenever a sentence of death is duly commuted to transportation, the offender shall, [1][as soon as may be convenient], be delivered over with a warrant of commitment, containing an authenticated copy of the sentence or commuted sentence, to the officer in charge of [1][a jail]; and such officer shall give effect to the sentence accordingly, under such order as he may receive from the Local Government.

Imprisonment with hard labour.

Article 151.—Whenever the duly confirmed sentence of any court-martial awards imprisonment with hard labour, or whenever the sentence of any court-martial is duly commuted to such imprisonment, the offender shall, [1][as soon as may be convenient], be delivered over with a warrant of commitment, containing an authenticated copy of the said sentence or commuted sentence, to the officer in charge of [1][a jail];

[1] The words "as soon as may be convenient" were inserted and for the words "the nearest jail" the words "a jail" were substituted by Act XII of 1894, s. 53.

and such officer shall detain the offender, under the rules in force, in such jail, according to the exigency of the warrant, or until he is discharged by due course of law:

[1] Provided that in the case of a sentence of such imprisonment for a period not exceeding three months, the confirming or superior authority or, in the case of a summary court-martial, the commanding officer holding the trial may direct that the sentence shall be undergone in military custody.

Place of imprisonment.

Article 152.—[2][Subject to the control of the Commander-in-Chief in India], [3][the general officer of the Command] may, as occasion requires, direct that any person under his command and sentenced under these Articles to imprisonment, shall be confined in any jail or other fit place for confinement, situate within the local limits of such command, or may order his removal from any place of confinement under military control to any other such place, or to any jail or other fit place of confinement situate within such local limits.

[4][Subject as aforesaid,] the officer comanding any force not attached to [5][a Command] shall have the like powers so far as regards persons under his command and jails or other places of confinement situate within the local limits of such command.

Transfer to military custody.

Article 153.—When any person subject to these Articles is confined in any jail or other place not subject to military control, under a sentence of transportation or imprisonment, whether passed by a court-martial or by a court of criminal justice, the Government of India, or the Local Government of the Presidency or place wherein such person is confined, may order his transfer to military custody,

or may order his removal from one to any other such place of confinement within the territories of such Government.

The period during which such person is in custody during his removal shall be reckoned as part of his term of transportation or imprisonment.

Forfeiture of pay during imprisonment.

Article 154.—Any person subject to these Articles in receipt of public pay, who is imprisoned in any place under the sentence, or commuted sentence, of a court-martial, or a court of criminal justice, shall, during such imprisonment, if his sentence does not involve dismissal under article 155 or article 157, forfeit all pay and allowances, and be entitled

[1] This proviso was added by Act XII of 1894, s. 54.
[2] These words were prefixed by Act XII of 1894, s. 55.
[3] These words were substituted for the words "the Commander-in-Chief of a Presidency" by Act XII of 1894, s. 55.
[4] These words were prefixed by Act XII of 1894, s. 56.
[5] These words were substituted for the words "any Presidency" by Act XII of 1894, s. 56.

to subsistence only, according to the rates prescribed in the regulations of the Government to which he is subject.

And any such person in confinement in any place whatsoever, whether as a punishment by his commanding officer, or under any charge of which he is subsequently convicted, shall, during such confinement, forfeit all pay and allowances, and be entitled to subsistence only, according to the regulations of the Government to which he is subject.

Striking convict off strength of regiment.

Article 155.—Every person sentenced by any court-martial, or by any court exercising jurisdiction in criminal cases, to transportation or to imprisonment with hard labour for any term exceeding three months, shall, in the case of a sentence by a court-martial, from the date of confirmation of such sentence, and, in the case of a sentence by a criminal court, from the date of such sentence, [1][or, if an appeal be preferred against such sentence and fail, from the date of the disposal of such appeal], be struck off the strength of the regiment, corps or department to which he belongs:

[2] Provided that on active service any such person may, by order of the officer empowered under these Articles to confirm or otherwise dispose of the proceedings of the trial, be retained to serve in the ranks, and his service therein shall be reckoned as part of his term of transportation or imprisonment.

Articles 156 to 159.—[*Non-re-admission of convict; dismissal with ignominy; publication of sentence for disgraceful conduct; sentences of summary courts-martial.*] *Repealed by Act XII of 1894, s. 59.*

CHAPTER VI.

Pardons and Remissions.

Pardons and remissions.

[3]*Article 160.*—When any person subject to these Articles has been convicted by a court-martial of any offence,—

(*a*) the Governor General in Council, or,

(*b*) when the person has been convicted of any offence other than a civil offence, the Commander-in-Chief in India or the general officer of the Command,

may,—

(*1*) pardon the person;

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[1] These words were inserted by Act XII of 1894, s. 57.
[2] This proviso was added by Act XII of 1894, s. 58.
[3] This article was substituted for the original article 160 by Act XII of 1894, s. 60.

(*2*) remit wholly or in part any punishment awarded to him;
(*3*) order the restoration to him of any service or other advantage forfeited under his sentence; or
(*4*) re-admit him to the service when he has been dismissed therefrom:

Provided that the general officer of the Command shall not exercise the powers conferred by this section in respect of any person, unless—

(*1*) the person was under his authority when sentenced; and
(*2*) the person is still in the service, or, if the person has been dismissed from the service, the corps or department from which he was dismissed has since continued under the authority of that officer.

Release of prisoners.

Article 161.—Any officer in charge of a jail, on receiving a notification under the hand of a Secretary to the Government of India, * * * * * * * [1] or under the hand of the [2][Commander-in-Chief in India or the general officer of the Command, or of the officer commanding any force not attached to a Command], or any [3][division, district or brigade], that the sentence under which any person subject to these Articles is imprisoned in such jail, has been annulled or remitted, or that any such person has been pardoned under article 160, shall, on the authority of such notification alone, immediately release the prisoner or return him to military custody.

[4] *Preservation of Proceedings.*

Preservation of proceedings of courts-martial.

[4]*Article 161A.*—(*1*) The proceedings of all general courts-martial shall be preserved by the judge advocate general for not less than seven years, and the proceedings of summary general courts-martial and district courts-martial for not less than three years, from the date of the confirmation of the finding and sentence.

(*2*) The proceedings of regimental and summary courts-martial shall be preserved for three years with the records of the corps or department to which the prisoner belonged.

(*3*) Every person tried by a court-martial shall be entitled, on demand at any time after the confirmation of the finding and sentence

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[1] The words " or to the Government of Fort St. George or to the Government of Bombay " were repealed by Act XII of 1894, s. 61.
[2] These words were substituted for the words " Commander-in-Chief of any Presidency, or of the officer commanding any force not attached to a Presidency," by Act XII of 1894, s. 61.
[3] Substituted for the words " division or district " by the Indian Articles of War (Amendment) Act, 1905 (V of 1905), General Acts, Vol. VI.
[4] This heading and article 161A were inserted by Act XII of 1894, s. 62.

where such confirmation is required, and before the proceedings are destroyed, to obtain from the officer or person having the custody of the proceedings a copy thereof, including the proceedings upon revision, if any, upon payment for the same at the prescribed rate.

CHAPTER VII.

Regimental Courts of Enquiry.

Enquiry on absence of person subject to Articles.

[1]*Article 162.*—(*1*) When any person subject to these Articles has been absent without due authority from his duty for a period of sixty days, a Court of Enquiry shall, as soon as practicable, be assembled and, upon affirmation or oath administered in the prescribed manner, shall enquire respecting the absence of the person, and the deficiency, if any, of property of the Government entrusted to his care, or of his arms, ammunition, equipments, instruments, clothing or necessaries; and, if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency, if any; and the commanding officer of the corps or department to which the person belongs shall enter in the court-martial book of the corps or department a record of the declaration.

(*2*) If the person declared absent does not afterwards surrender, or is not apprehended, the record shall have the legal effect of a conviction of desertion.

(*3*) If the person declared absent surrenders or is apprehended, the record or a copy thereof, purporting to bear the signature of the officer having the custody of the court-martial book, shall, on the trial of the person for desertion, be presumptive evidence of the facts therein recorded; and, on proof of the identity of the prisoner with the person therein mentioned, he may be found guilty of desertion and of the deficiency, if any, therein recorded.

Persons absent as prisoners of war.

Article 163.—No person subject to these Articles shall be entitled to any pay or allowances or other public money, or to reckon service, during any absence as a prisoner of war.

But when such person rejoins the service, enquiry shall be made by a court-martial into the circumstances of his absence; and unless it is proved to the satisfaction of such court that he was taken prisoner through his own wilful neglect of duty, or that he had served with or under, or aided, the enemy, or that he had not, as soon as possible, returned to the service, he may be recommended by the court to receive

[1] This article was substituted for the original article 162 by Act XII of 1894, s. 63.

either the whole or any portion of the arrears due to him, and to reckon his service.

[1] Such recommendation, duly confirmed by the Commander-in-Chief in India, or by the general officer of the Command, or the officer commanding any force not attached to a Command to which he belongs, or by any general officer under whose command the person is serving, shall entitle him to receive such arrears and reckon service accordingly.

TITLE IV.

Powers of Officers Independently of Treal.

Reduction to lower grade or ranks.

[2]*Article 164.*—The Commander-in-Chief in India, the general officer of the Command, the officer commanding any force not attached to a Command, and the officer commanding any district or division or brigade shall respectively have power to reduce to a lower grade or to the ranks any non-commissioned officer under his command.

Minor punishments.

Article 165.—The Commander-in-Chief in India shall, under the authority of the Governor General in Council, prescribe the minor punishments to which persons subject to these Articles shall for light offences be liable, without the intervention of a court-martial, and shall specify the officer or officers by whom, and the extent to which, such minor punishments may be awarded.

[3]Unless otherwise specially provided by the said Commander-in-Chief, no Native Officer, medical subordinate or warrant officer shall be liable to any such minor punishment.

Good-conduct pay shall not necessarily be forfeited on the infliction of a minor punishment, but forfeiture thereof may be awarded as a substantive punishment, by order of the commanding officer, as may from time to time be prescribed in the General Orders of the Commander-in-Chief in India.

Forfeiture of good-conduct pay may be awarded in addition to any other minor punishment.

Offences of Native followers.

Article 166.—For any offence in breach of good order, the commanding officer of any regiment, corps or detachment, whether European or Native, in camp, or at any frontier post at which troops are stationed, and to which this article may be specially extended by the

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[1] This paragraph was substituted for the original paragraph by Act XII of 1894, s. 64.
[2] This article was substituted for the original article 164 by Act XII of 1894, s. 65.
[3] These three concluding paragraphs were substituted for the original paragraphs by Act XII of 1894, s. 66.

Governor General of India in Council, * * * *[1] may sentence any Native follower of such regiment, corps or detachment, if above the degree of a menial servant, to pay a fine not exceeding fifty rupees, or, in default of payment, or in lieu thereof, to imprisonment for any period not exceeding thirty days; or, if the Native follower be not above the degree of a menial servant, to imprisonment not exceeding seven days or to corporal punishment not exceeding twelve strokes of a rattan.

Imprisonment awarded under this article may be carried out in a military guard, or in a jail, as ordered by the said commanding officer; and the officer in charge of any jail shall, on the delivery to him of the person of the offender, with a warrant, under the hand of the said commanding officer, detain the offender according to the exigency of the warrant, or until he is discharged by due course of law.

Complaints against officers.

Article 167.—Any person subject to these Articles who deems himself wronged by any superior or other officer, may, if not attached to a troop or company, complain to the officer under whose command or orders he is serving; and may, if attached to a troop or company, complain to the officer commanding the same.

When the officer complained against is the officer to whom any other complaint should, under this article, be preferred, the aggrieved person shall complain to such officer's next superior officer.

No such complaint shall be made to any officer other than those indicated in the former part of this article.

Every officer receiving any such complaint shall examine into it, and, when necessary, refer it to superior authority.

Every such complaint shall be preferred through such channels as may be from time to time prescribed by proper authority; and any person preferring a frivolous or groundless complaint shall be liable to trial by any court-martial competent to try him, and to such punishment, other than dismissal, corporal punishment, or imprisonment with hard labour, as the court is empowered by these Articles to award.

Provost-marshals.

Article 168.—For the prompt and instant repression of irregularities and offences committed in the field or on the line of march, provost-marshals shall be appointed by [2][the Commander-in-Chief in India or the general officer of the Command] or the officer commanding the forces in the field; and the powers and duties of such provost-marshals shall

[1] The words " the Governor of Fort St. George in Council, the Governor of Bombay in Council, or any other Local Government," were repealed by Act XII of 1894, s. 67.

[2] These words were substituted for the words " the Commander-in-Chief of the Presidency " by Act XII of 1894, s. 68.

be regulated according to the established custom of war and the rules of the service.

Article 169.—The duties of a provost-marshal so appointed are to take charge of prisoners confined for offences of a general description, to preserve good order and discipline, and to prevent breaches of the same by persons belonging or attached to the Army. Their duties and powers.

The provost-marshal may punish, corporally, then and there, any person amenable to these Articles below the rank of [1][non-commissioned officer] who in his view, or in the view of any of his assistants, commits any breach of good order and military discipline:

Provided that such punishment shall be limited to the necessity of the case, and shall accord with the orders which the provost-marshal may from time to time receive from the officer commanding the troops.

Provided also that the orders of the said commanding officer shall in no case authorize such corporal punishment in excess of that awardable by sentence of a court-martial.

If the actual commission of the offence is not witnessed by the provost-marshal, or any of his assistants, but sufficient proof can be obtained of the offender's guilt, he shall report the case to the commander of the troops, who shall deal with the case as he may deem most conducive to the maintenance of good order and military discipline.

TITLE V.

NON-MILITARY OFFENCES.

Offences [2][of which any person is accused] within jurisdiction of Criminal Court.

Article 170.—Any person subject to these Articles, who, at any place in British India within the jurisdiction of any court of criminal justice established by Her Majesty, or by the Government of India, or by the Local Government, is accused of any offence against the Indian Penal Code,[3] and not included in the foregoing Articles, shall be delivered over to the nearest magistrate to be proceeded against according to law * * * * [4] Offences of which any person is accused within jurisdiction of criminal court.

XLV of 1860.

[1] These words were substituted for the words " warrant officer " by Act XII of 1894, s. 69.

[2] These words were substituted for the words " committed " by the Repealing and Amending Act, 1891 (XII of 1891).

[3] General Acts, Vol. I.

[4] The second and third paragraphs were repealed by Act XII of 1894, s. 70.

[1]*Civil Offences.*

Military jurisdiction with respect to civil offences.

[1]*Article 171.*—Every person subject to these Articles who at any place beyond British India commits any civil offence shall be deemed to be guilty of an offence against military law, and if charged therewith under this article shall, subject to the provisions of these Articles, be liable to be tried for the same by court-martial at any place, whether within or beyond British India, and on conviction to be punished as follows, that is to say:—

(*a*) if the offence is one which would be punishable under the law of British India with death or with transportation, or with imprisonment for a term exceeding three years, he shall be liable to suffer any punishment assigned for the offence by the law of British India; and

(*b*) in other cases, he shall be liable to suffer any punishment assigned for the offence by the law of British India or such punishment as might be awarded to him in pursuance of these Articles in respect of an act to the prejudice of good order and military discipline.

Extension of article 171 to certain civil offences.

[1] *Article 172.*—The Governor General in Council may, by notification, extend the last foregoing article to civil offences or any class of those offences committed by a person subject to these Articles when on active service in British India, and may cancel any such notification.

Certain offences when triable by military law.

[1] *Article 173.*—Every person subject to these Articles who, whether within or beyond British India, commits or attempts to commit or abets the commission of any of the following offences against any person subject to military law, that is to say, murder, culpable homicide or any offence punishable under any of the sections 323 to 335 (both inclusive) or section 506 of the Indian Penal Code,[2] shall be deemed to be guilty of an offence against military law, and if charged under this article with any such offence shall, subject to the provisions of these Articles, be liable to be tried by court-martial at any place whether within or without British India, and on conviction shall be liable to suffer any punishment assigned for the offence by the said Code. XLV of 1860.

Jurisdiction over certain offences.

[1] *Article 174.*—When under any of the foregoing Articles a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the prescribed military authority to decide before which court the proceedings shall be instituted, and, if that authority decides that they shall be instituted before a court martial, to direct that the accused person shall be detained in military custody.

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[1] This heading and articles 171 to 175 here printed were substituted for the original articles 171 to 175 by Act XII of 1894, s. 71.

[2] General Acts, Vol. I.

Power of criminal court to require delivery of offender.

[1] *Article 175.*—(*1*) When a criminal court having jurisdiction is of opinion that proceedings ought to be instituted before itself in respect of any alleged offence, it may, by written notice, require the convening authority or the prescribed military authority at his option either to deliver over the offender to the nearest magistrate to be proceeded against according to law or to postpone proceedings pending a reference to the Governor General in Council.

(*2*) In every such case the said authority shall either deliver over the offender in compliance with the requisition or shall forthwith refer the question as to the court before which the proceedings are to be instituted for the determination of the Governor General in Council, whose order upon such reference shall be final.

[2] TITLE VI.

PROPERTY OF DECEASED PERSONS AND DESERTERS.

Property of deceased persons, deserters and lunatics.

[2] *Article 176.*—The following rules are enacted respecting the disposal of the property of every person who belongs to a class subject to these Articles who dies, is killed in the field or deserts:—

(*1*) The commanding officer shall secure all the moveable property that is on the spot, and cause an inventory thereof to be made, and draw any pay and allowances due to the deceased or deserter.

(*2*) In the case of a deceased person who has left in a Government Savings Bank (including any Post Office Savings Bank, however named), a deposit not exceeding one thousand rupees, the commanding officer may, if he thinks fit, require the Secretary or other proper officer of the bank to pay the deposit to him forthwith notwithstanding anything in any departmental rules; and, after the payment thereof in accordance with such requisition, no person shall have any right in respect of the deposit except as hereinafter provided.

(*3*) In the case of a deceased person whose representative is on the spot and has given security for the payment of the regimental debts (if any) of the deceased, the commanding officer shall deliver over the property and the amount of the deposit (if any) received under clause (*2*) of this article to that representative.

(*4*) In the case of a deceased person whose estate is not dealt with under clause (*3*) of this article, and in the case of any deserter, the

[1] *See* footnote on preceding page.

[2] This Title and the articles 176 to 179 here printed were substituted for the original articles 176 to 179 by Act XII of 1894, s. 72.

commanding officer shall cause the property to be sold by public auction, and shall pay the regimental debts and other debts in camp or quarters (if any), and in the case of a deceased person the expenses of his funeral ceremonies, from the proceeds of the sale and the amount of the deposit (if any) received under clause (*2*) of this article.

(*5*) The surplus, if any, shall in the case of a deceased person be paid to his representative, if any, or in the event of no claim to such surplus being established within twelve months after the death, then the same shall be remitted to the prescribed officer.

(*6*) In the case of the sale of the effects of a deserter, the amount remaining in the hands of the commanding officer shall be forthwith remitted to the prescribed officer.

Disposal of certain property without production of probate, etc.

[1] *Article 177.*—Property deliverable and money payable to the representative of a deceased person under the last foregoing article may, if the total value or amount thereof does not exceed one thousand rupees, and if the prescribed officer thinks fit, be delivered or paid to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, without requiring the production of any probate, letters of administration, certificate or other such conclusive evidence of title; and such delivery or payment shall be a full discharge to those ordering or making the same and to the Secretary of State for India in Council from all further liability in respect of the property or money; but nothing in this article shall affect the rights of any executor or administrator or other representative, or of any creditor, of a deceased person against any person to whom such delivery or payment has been made.

Meaning of desertion in article 176.

[1] *Article 178.*—A person shall be deemed to have deserted within the meaning of article 176 who has been convicted of desertion, or who has been illegally absent from duty for a period of sixty days and has not subsequently surrendered or been apprehended.

Application of article 176 to lunatics.

[1] *Article 179.*—The provisions of the last-mentioned article shall, so far as they can be made applicable, apply in the case of a person subject to these Articles becoming insane. [2] * * * *

[3]PART III.

MISCELLANEOUS.

Prohibition of second trial.

Article 180.—When any person subject to these Articles has been

[1] *See* second footnote on preceding page.
[2] The concluding portion of this article was repealed by the Repealing Act, 1901 (I of 1901), s. 1 and Schedule.
[3] This Part was substituted for the original Part III by Act XII of 1894, s. 73.

acquitted or convicted of an offence by a court-martial or by a criminal court, or has been summarily dealt with for an offence under article 165 or 166, he shall not be liable to be again tried for the same offence by a court-martial or dealt with summarily in respect of it under either of the said articles.

Exemption from arrest for debt.

[1]*Article 181.*—(*1*) No person subject to these Articles shall, so long as he belongs to Her Majesty's Indian Forces, be liable to be arrested for debt under any process issued by, or by the authority of, any civil or revenue court or revenue-officer.

(*2*) The judge of any such court may examine into any complaint made by such person or his superior officer of the arrest of such person contrary to the provisions of this article, and may by warrant under his hand discharge the person, and award reasonable costs to the complainant, who may recover those costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining the process.

(*3*) For the recovery of such costs no fee whatever shall be payable to the court by the complainant.

Property exempted from attachment.

[1]*Article 182.*—Neither the arms, clothes, equipment, accoutrements or necessaries of any person subject to these Articles, nor any animal used by him for the discharge of his duty, shall be seized; nor shall the pay and allowances of any such person or any part thereof be attached, by direction of any civil or revenue court or any revenue-officer, in satisfaction of any decree or order enforceable against him.

Application of the last two foregoing articles to reservists.

[1]*Article 183.*—Every person belonging to the Indian Reserve Forces shall, when called out for or engaged upon or returning from training or service, as an officer or soldier, be entitled to all the privileges accorded by the two last foregoing articles to a person subject to these Articles.

Priority of hearing by courts of cases in which Native officers and soldiers are concerned.

[1] *Article 184.*—(*1*) On the presentation to any court by or on behalf of any officer or soldier subject to these Articles of a certificate, from the proper military authority, of leave of absence having been granted to or applied for by him for the purpose of prosecuting or defending any suit or other proceeding in such court, the court shall, on the application of such officer or soldier, arrange, so far as may be possible, for the hearing and final disposal of such suit or other proceeding within the period of the leave so granted or applied for.

(*2*) The certificate from the proper military authority must state the first and last day of the leave or intended leave, and set forth a

[1] *See* Act XII of 1894, s. 73, General Acts, Vol. IV.

description of the case with respect to which the leave was granted or applied for.

(*3*) No fee whatever shall be payable to the court in respect of the presentation of any such certificate, or in respect of any application by or on behalf of any such officer or soldier for priority for the hearing of his case.

(*4*) Where the court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the period of such leave or intended leave as aforesaid, it shall record its reasons for having been unable to do so, and shall cause a copy thereof to be furnished to such officer or soldier on his application without any payment whatever by him in respect either of the application for such copy or of the copy itself.

(*5*) If in any case a question arises as to the proper military authority qualified to grant such certificate as aforesaid, such question shall be at once referred by the court to the nearest officer commanding a corps, whose decision shall be final.

Capture of deserters.

[1] *Article 185.*—(*1*) Whenever any person subject to these Articles deserts, the commanding officer of the corps, department or detachment to which he belongs shall give written information of the desertion to such civil, political or police authorities as, in his opinion, may be able to afford assistance towards the capture of the deserter; and such authorities shall thereupon take steps for the apprehension of the said deserter in like manner as if he were a person for whose capture a warrant had been issued by a magistrate, and shall deliver the deserter, when apprehended, to military custody.

(*2*) Such authorities shall also, by such means as appear to them best adapted for the purpose, prevent persons reasonably believed to be subject to these Articles from travelling through the areas subject to their jurisdiction, unless on duty or furnished with a certificate of leave or discharge.

(*3*) Any police-officer may arrest, without warrant, any person reasonably believed to be subject to these Articles and to be travelling without authority, and shall bring him without delay before the nearest magistrate, or the nearest military commanding officer when no magistrate is readily accessible, to be dealt with according to law.

Apprehension of military offenders.

[1] *Article 186.*—Whenever any person subject to these Articles, who is accused of any military offence, is within the jurisdiction of any civil, political or police-officer, such officer shall aid in the apprehension and delivery to military custody of such person upon receipt of a written application to that effect signed by his commanding officer.

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[1] *See* Act XII of 1894, s. 73.

Presumption as to signatures.

[1] *Article 187.*—In any proceeding under these Articles, any application, certificate, warrant, reply or other document purporting to be signed by an officer in the civil or military service of the Government shall, on production, be presumed to have been duly signed by the person and in the character by whom and in which it purports to have been signed, until the contrary is shown.

Portions of the forces under an Army Command.

[1] *Article 188.*—(*1*) The Governor General in Council may direct that for the purposes of these Articles—

(*a*) any portion of Her Majesty's Indian Forces belonging to a Command shall, when serving beyond the ordinary limits of the Command, continue subject to the authority of the general officer of the Command; or

(*b*) any portion of those forces not belonging to a Command shall be attached to a Command, and shall be subject to the authority of the general officer of the Command.

(*2*) Except as may be directed under clause (*1*) of this article, any portion of the said forces shall, when serving in a Command, be for the purposes of these Articles subject to the authority of the general officer of that Command.

Saving of authority of Commander-in-Chief in India.

[1] *Article 189.*—Nothing in these Articles shall be deemed to affect the authority conferred on the Commander-in-Chief in India by any Act of Parliament or by Royal Warrant or Commission.

Power to make rules.

[1] *Article 190.*—(*1*) The Governor General in Council may, by notification, make rules [2] consistent with these Articles to regulate the procedure of courts-martial and officers, military, civil or political, having any jurisdiction or authority under these Articles, and for the purpose of carrying these Articles into execution, so far as relates to the investigation, trial and punishment of offences triable under them.

(*2*) Rules under this article may provide among other matters for the following:—

(*a*) the assembly and procedure of courts of enquiry;

(*b*) the convening and constituting of courts-martial;

(*c*) the adjournment, dissolution and sittings of courts-martial;

(*d*) the procedure to be observed in trials by courts-martial;

[3](*e*) the confirmation and revision of the findings and sentences of courts-martial;

(*f*) the carrying into effect sentences of courts-martial;

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[1] *See* Act XII of 1894, s. 73.

[2] For rules made, *see* notification No. 710, Gazette of India, 1899, Pt. I, p. 619, as amended by notifications in Gazette of India, 1904, Pt. I, pp. 485 and 658.

[3] For notification under this clause declaring who shall be the "prescribed military authority" for the purposes of articles 174 and 175, *see* Gazette of India, 1897, Pt. I, p. 123.

(*g*) the forms of orders to be made under the provisions of these Articles relating to courts-martial, transportation or imprisonment.

(*3*) The Governor General in Council may by any such rule confer on any court-martial or officer any power (other than a power to try an accused person or pass a sentence) conferred on a court of original jurisdiction by the Code of Criminal Procedure, 1882.[1] X of 1882.

Powers to apply Articles to certain forces under the Government of India.

[2]*Article 191.*—(*1*) The Governor General in Council may, by notification, apply all or any[3] of the provisions of these Articles to any force raised and maintained in India under the authority of the Governor General in Council, and may cancel or modify any such notification.

(*2*) While any of the provisions of these Articles apply to any such force, the Governor General in Council may, by notification, direct by what authority any jurisdiction, powers or duties incident to the operation of those provisions shall be exercised or performed in respect to that force.

APPENDIX.

[*The Appendix, which set out certain sections of the Indian Penal Code, has been rendered obsolete by the substitution of Part I (e) and of article 71 for the original Part I (e) and article 71 respectively by sections 4 and 22 of Act XII of 1894. It has accordingly been omitted.*]

THE SECOND APPENDIX.[4]

[*Rep. Indian Articles of War Amendment Act, 1904.*]

THE INDIAN VOLUNTEERS ACT, 1869.

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1. Short title.

[1] *See* now the Criminal Procedure Code, 1898 (Act V of 1898), General Acts, Vol. V.

[2] *See* Act XII of 1894, s. 73.

[3] For notifications applying these Articles to the Mewar Bhil Corps and exempting the Malwa and Mewar Bhil Corps from the operation of the provisions of article 1 (4), *see* Gazette of India, 1897, Pt. I, p. 120, and *ibid*, 1898, Pt. I, p. 655, respectively.

[4] This Appendix, now repealed, was originally added by the Indian Articles of War Amendment Act, 1894 (XII of 1894), s. 74.

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11. Regimental Courts-Martial.
12. Procedure of Courts-Martial held under this Act.

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13. Power to quit the corps.
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28. Power to make rules as to allowances to volunteers.
29. Appointment of Local Government to act with respect to corps having members enrolled in more provinces than one.

ACT No. XX OF 1869.[1]

[*10th September 1869.*]

An Act to provide for the good order and discipline of Volunteer Corps, and to invest them with certain powers.[2]

Preamble. WHEREAS many loyal subjects of Her Majesty have volunteered their services for the protection of life and property and the preservation of the peace, and have with the sanction of Government associated and enrolled themselves as Military Corps under the command of officers appointed for that purpose; and it is expedient to provide for the good order and discipline of such corps, and to invest their members with certain powers; It is hereby enacted as follows:—

Preliminary.

Short title. **1.** This Act may be called the Indian Volunteers' Act, 1869.

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[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1869, Pt. V, p. 23; for Proceedings in Council, *see ibid*, Supplement, pp. 1059, 1074, 1154, 1172 and 1177.

This Act has been declared in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (1) and Sch. I [Bur. Code]; in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890), s. 3 [Bal. Code]; in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872), as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (III of 1899) [Ben. Code]; also by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), in the Districts of Hazáribágh, Lohárdaga [the district of Lohárdaga at that time included the present district of Palamau which was separated in 1894; the district of Lohárdaga is now called the Ranchi district : *see* Calcutta Gazette, 1899, Pt. I, p. 44], and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum [Gazette of India, 1881, Pt. I, p. 504].

[2] As to requiring Volunteers to assist in dispersing unlawful assemblies, *see* the Code of Criminal Procedure, 1898 (Act V of 1898), s. 130, General Acts, Vol. V.

(Preliminary. Formation and Dissolution of Volunteer Corps. Application of Army Act.)

Extent of Act.

2. This Act shall extend to the whole of British India and (so far as regards British subjects) to the dominions of Native Princes and States in alliance with Her Majesty.

3. [*Repeal of Act XXIII of 1857.*] *Rep. by the Repealing Act, 1870 (XIV of 1870).*

Definitions.

[1] **4.** (*1*) "Magistrate" means, within the limits of the presidency-towns the Chief Presidency Magistrate, and without those limits a Magistrate of the first class who is a Justice of the Peace:

(*2*) volunteers shall be deemed to be on "actual duty"—

(*a*) when being trained or exercised either alone or with any portion of the regular forces, or

(*b*) when attached to or otherwise acting as part of or with any regular forces, or

(*c*) when serving in aid of the civil power; and

(*3*) "civil district" means a district as defined in the Code of Civil Procedure.[2]

Formation and Dissolution of Volunteer Corps.

Formation of corps.

5. Corps of Volunteers may, with the sanction of the Governor General of India in Council, or of the Local Government, be formed in any part of British India or of the said dominions.[3]

Certificate of Commanding Officer to be evidence of enrolment.

6. A certificate of enrolment in such corps, signed by the Commanding Officer thereof, shall be *primâ facie* evidence of such enrolment.

Power to disband corps or remove members.

7. The Governor General of India in Council or the Local Government may disband any corps formed or enrolled under the provisions of this Act or of Act No. XXIII of 1857,[4] or remove from such corps any member therof.

Application of Army Act.

Volunteers subjected to Army Act,

[5] **8.** Every member of a corps of volunteers shall, for all military offences of which he shall be guilty whilst on actual duty or actual

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[1] This section was substituted for the original section by the Indian Volunteers Act Amendment Act, 1896 (X of 1896), s. 2, General Acts, Vol. IV. The original s. 4 defined the term "Magistrate" within the limits of the presidency-towns as a Magistrate of Police, and without those limits as a person exercising the full powers of a Magistrate.

[2] This reference should now be taken as made to the Code of Civil Procedure, 1908 (Act V of 1908), *see* s. 158 of that Act, General Acts, Vol. VI.

[3] For notifications issued under the powers conferred by this section, in Burma, *see* Bur. R. M.

[4] Act XXIII of 1857 is repealed by s. 3 of this Act.

[5] This section was substituted for the original section by the Indian Volunteers Act Amendment Act, 1896 (X of 1896), s. 3.

so far as it applies to officers.

military service, be subject to the Army Act,[1] so far as the same is applicable to officers and consistent with the provisions of this Act. 44 & 45 Vict. c. 8.

Courts Martial.

Appointment of, and sentences by, General Courts Martial.

9. General Courts Martial shall be convened and appointed by the Commanding Officer of the corps, with the sanction of the Local Government, for the trial of military offences of which any member of such corps shall be guilty whilst on actual duty.

No sentence of such Court Martial shall be put into execution until after a report of the whole proceedings shall have been made to, and the sentence shall have been confirmed by, the Local Government.

The Local Government may commute any such sentence for a less punishment, or pardon the offender.

General Courts Martial of whom to be composed.

10. General Courts Martial shall consist of not less than nine members of the corps, and every member of the corps, whether an officer or not, shall be competent to sit and act as a member of such Court Martial.

Regimental Courts Martial.

11. Regimental Courts Martial may be convened by the Commanding Officer of the corps, and shall consist of not less than three members of the corps.

Procedure of Courts Martial held under this Act.

12. The proceedings of Courts Martial convened under this Act shall be conducted according to the laws and customs applicable to Courts Martial held under the said [2][Army Act], except so far as the same are inconsistent with the provisions of this Act.

Withdrawal from Corps.

Power to quit the corps.

13. Any person enrolled as a member of a corps of Volunteers, whether he shall have been elected or commissioned as an officer in such corps or not, may, except whilst on actual duty [3][or actual military service], quit the corps upon giving to the Officer Commanding the corps seven days' previous notice in writing of his intention so to do, or without such notice if the Commanding Officer of the corps shall consider it reasonable and allow him so to do.

Commissions to officers to cease on retirement or dismissal.

14. Every commission to any member of a corps of Volunteers appointing him an officer in such corps shall cease upon his retirement or dismissal from the corps.

Delivery of arms belonging to Gov-

15. Every member of a corps of Volunteers who shall have received any arms, ammunition, accoutrements or uniform belonging to Govern-

[1] *See* now the Army Act (44 & 45 Vict., c. 58), as amended by the Army Annual Act for the time being in force. [Coll. Stat., Vol. II, p. 614.]

[2] These words were substituted for the original words "Articles of War," by the Indian Volunteers Act Amendment Act, 1896 (X of 1896), s. 4.

[3] These words were inserted by Act X of 1896, s. 5.

ment, or which shall have been furnished from the public stores or at the public expense, shall upon his quitting such corps, ernment by members quitting the corps.

or upon his dismissal therefrom,

or whenever he shall be required so to do by the Commanding Officer of the corps,

or whenever the corps shall be disbanded,

deliver up to the Commanding Officer, or such person as he shall appoint to receive the same, all such arms, ammunition, accoutrements and uniform in good order and condition, reasonable wear thereof only excepted;

and in default thereof he shall pay such sum of money as shall be adjudged by a Regimental Court Martial to be assembled for that purpose by the Commanding Officer of the corps. A copy of such adjudication, signed by the President of the Court Martial, shall be sent to the principal Court of original civil jurisdiction in the district in which the adjudication shall have been given, and shall be executed by such Court as if it were a decree for money under the Code of Civil Procedure.[1]

Local Limits of Service.

[2] **16.** No member of a corps or battalion of volunteers, other than naval volunteers, shall be bound, without his consent, to serve or proceed on duty beyond the limits of the civil district in which he was enrolled, or, where a corps or battalion consists of volunteers enrolled in more civil districts than one, beyond the limits of the territory comprised in those districts: and Local limits of service.

no member of a corps of naval volunteers shall be bound, without his consent, to serve or proceed on duty beyond the limits of the port to which the corps belongs, such port being construed to include the city or town after which the corps is named, and its suburbs, and the navigable rivers, channels and fairways leading thereto:

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[1] This reference should now be taken as made to Act V of 1908 [General Acts, Vol. VI].

[2] This section was substituted for the original section by the Indian Volunteers Act Amendment Act, 1896 (X of 1896), s. 6, but its provisions do not apply to a volunteer enrolled before the commencement of Act X of 1896, unless he consents in writing to be bound thereby— *see* s. 9 of that Act.

The original section is as follows :—

"*Local Limits of Service.*

16. "No member of a corps of volunteers shall be bound, without his consent, to serve or proceed on duty beyond the limits within which he shall have voluntarily engaged to serve or proceed on duty in accordance with the terms upon which the corps to which he belongs shall have been constituted; and, in case no such limits shall have been fixed, he shall not be liable to serve or proceed on duty beyond 4 miles from the place at which he was enrolled."

No member bound to serve beyond certain distance.

Provided that the Local Government or the Commissioner of the Division, or other authority to whom power in this behalf may be delegated by the Local Government, may exempt from service any particular corps or portion of a corps or any individual member or members of a corps by name. Such exemption may be whole or partial in respect either of time or of area, or of both, as the empowered authority may see fit to prescribed.

Rules.

Commanding Officer to frame rules which shall be binding on the members.

17. The Commanding Officer of every corps of Volunteers may frame such general rules as he may think fit for regulating the times at which and the manner in which the duties of the corps and of the several members or detachments thereof shall be discharged.

Such rules, when sanctioned by the Local Government, shall be binding on the corps and on the several members thereof.

Penalties.

Not attending actual duty other than drill or parade.

18. If any member of a corps of Volunteers, being warned for actual duty other than drill or parade, shall, without reasonable excuse, neglect to attend such duty, he shall be liable, upon conviction by a General Court Martial, to a fine not exceeding one hundred rupees, or to simple dismissal from the corps, or to dismissal from the corps as unworthy to belong to it.

Not attending drill or parade.

19. If any member of such corps shall, without reasonable excuse, neglect to attend drill or parade at such times as may be appointed for that purpose,

Other minor military offence.

or shall be guilty of any neglect of duty or other military offence which in the judgment of the Commanding Officer of the corps will be sufficiently punished by a small fine,

he shall be liable to pay such fine, not exceeding fifty rupees, as a Regimental Court Martial shall impose.

Punishment for non-payment of fine.

20. If any member of such corps shall neglect or refuse to pay any fine to which he shall be sentenced by any Court Martial, within such time as shall be fixed by the Commanding Officer of the corps, he may be dismissed by the said Commanding Officer from the said corps; and every such dismissal shall be recorded and reported to the Local Government.

Penalty for assaulting or resisting Volunteers in discharge of their duty.

21. Whoever assaults or resists, or abets within the meaning of the Indian Penal Code,[1] any person in assaulting or resisting any member of such corps in the discharge of his duty, shall be punishable, on conviction before a Magistrate, with fine not exceeding two hundred XLV of 1

[1] General Acts, Vol. I.

rupees, or with imprisonment for any term not exceeding six months, or with both.

Recovery of fines.

22. In default of payment of any fine imposed by a Court Martial under this Act, a copy of the sentence of the Court Martial imposing the fine, signed by the President of such Court, may be sent to a Magistrate in the presidency-town or the district in which the fine shall have been imposed, who shall thereupon cause the fine to be recovered as if he had himself imposed it.

Fines imposed under section 21 may be recovered [1][in the manner provided by the law for the time being in force for the recovery of fines imposed by Criminal Courts].

Powers of Volunteers.

Power to disarm persons;

23. Any member of a corps of volunteers, whenever he may be in discharge of his duty as a member of the corps, and wheresoever he may then be, may disarm any person not being in Her Majesty's Military or Naval service or a police-officer, found between sunset and sunrise in any public street, thoroughfare or other public place, armed with a sword, spear, gun or other warlike instrument, without a pass or license for that purpose from the Commissioner of Police or other officer authorized by Government to grant the same;

and may also disarm any person found armed at any time contrary to law or to any order of Government in any public street, thoroughfare or other public place;

and to apprehend and deliver to police.

and may also apprehend and deliver over to a police-officer any person so found armed in order that he may be dealt with according to law;

Forfeiture of weapons seized.

and the weapon so seized shall be forfeited to Government or otherwise dealt with according to law, or to the orders of Government.

Power to prevent disturbances of the public peace; to disperse unlawful assemblies;

24. Any member of such corps, whenever he is on duty, may prevent any disturbance of the public peace, and disperse any persons whom he may find assembled together to the number of five or more without reasonable cause between sunset and sunrise in any public street, thoroughfare or other public place in which such member of the said corps may be in the discharge of his duty;

to apprehend certain suspected persons.

and may also apprehend any person reasonably suspected of having committed, or being about to commit, any offence against the State, or

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[1] These words were substituted for the original words by the Repealing and Amending Act, 1891 (XII of 1891). The original words ran—

"if for offences committed outside the limits of the presidency-towns, in the manner prescribed by the Code of Criminal Procedure, and, if for offences committed within those limits, in the manner prescribed by an Act regulating the police of such towns in force for the time being."

of having abetted within the meaning of the Indian Penal Code,[1] or being about to abet, any other person in the commission of such offence; and deliver him over to some police-officer. XLV of 1860.

Miscellaneous.

Exemption from horse-tax.

25. Every mounted officer, and every mounted orderly of a corps of Volunteers, and every member of such corps, while he belongs to a troop of cavalry in such corps, shall be at liberty to keep one horse without being liable to pay in respect thereof any municipal or other tax imposed upon horses.

Suits for things done in pursuance of this Act.

[2]**26.** No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act * * * * * [3] without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends, nor after the expiration of three months from the accrual of the cause of suit or other proceeding.

Supplemental.

Calling out of volunteer corps for actual military service.

[4]**27.** (*1*) In case of actual or apprehended emergency (the occasion being first declared by the Governor General in Council and notified in the Gazette of India) the Governor General in Council may call out any corps or any portion of any corps of volunteers for actual military service.

(*2*) All members of any corps or portion of a corps so called out shall be bound, unless incapacitated by infirmity for military service, to assemble as the Governor General in Council may direct, and to proceed according to orders within the limits hereinbefore specified; and, from the time of their corps or portion thereof being so called out, shall be deemed to be on actual military service:

Provided that the Local Government or the Commissioner of the Division, or other authority to whom power in this behalf may be delegated by the Local Government, may exempt from service any particular corps or portion of a corps, or any individual member or members of a corps by name. Such exemption may be whole or partial in respect either of time or of area, or of both, as the empowered authority may see fit to prescribe.

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[1] General Acts, Vol. I.

[2] So much of s. 26 as relates to the limitation of suits was repealed by the Indian Limitation Act, 1871 (IX of 1871). *See* now the Indian Limitation Act, 1908 (IX of 1908), General Acts, Vol. VI.

[3] The words and figures " or the said Act No. XXIII of 1857 " were repealed by the Repealing Act, 1874 (XVI of 1874).

[4] Ss. 27, 28 and 29 were added by the Indian Volunteers Act Amendment Act, 1896 (X of 1896), s. 7, but the provisions of s. 27 do not apply to a volunteer enrolled before the commencement of Act X of 1896, unless he consents in writing to be bound thereby—*see* s. 9 of that Act, General Acts, Vol. IV.

(*3*) After a corps or portion of a corps of volunteers has been called out for actual military service, the corps or portion of a corps shall be deemed to be released from actual military service only after a notification in the Gazette of India declaring the occasion to have passed; and not sooner or otherwise:

Provided that the Governor General in Council may at any time discharge any such corps or portion of a corps from actual military service.

(*4*) Before a corps or portion of a corps of volunteers is released from actual military service, provision shall be made by the Government for the return of the volunteers present therewith to their homes.

Power to make rules as to allowances to volunteers.

[1] **28.** (*1*) The Governor General in Council may make rules for [2]—

(*a*) the making of payments to, and the provision of transport [3] and supplies for, volunteers called out on actual military service; and

(*b*) the grant of pay, pensions, gratuities, allowances and rewards to them.

(*2*) The Governor General in Council may apply such rules or any part of them to any volunteers who may have been called out by any Magistrate or other authority in aid of the civil power:

and may in such case direct, any enactment notwithstanding, by whom the cost of the payments to be made and supplies to be provided under the rules shall be borne.

Appointment of Local Government to act with respect to corps leaving members enrolled in more provinces than one.

[1] **29.** Where a corps consists of volunteers enrolled in territories subject to more Local Governments than one, the Governor General in Council may, by notification in the Gazette of India, declare what Local Government shall for all or any of the purposes of this Act be deemed to be the Local Government with respect to the corps.

ACT No. V OF 1870.[4]

[*4th February 1870.*]

An Act to enable the High Courts at the Presidency-towns to deal with costs of petitions for certain moneys transferred to Government.

Preamble.

WHEREAS the High Courts of Judicature at Fort William, Madras

[1] *See* fourth footnote on preceding page.

[2] For rules made in Burma under the powers conferred by this section, *see* Burma Laws List, Ed. 1897, p. 24.

[3] As to goods carried by volunteers in course of employment or duty as such on railways, *see* s. 59 of the Indian Railways Act, 1890 (IX of 1890), General Acts, Vol. IV.

[4] Short title, The Unclaimed Deposits Act, 1870. *See* the Indian Short Titles Act, 1897 (XIV of 1897), General Acts, Vol. IV.

For the Statement of Objects and Reasons, *see* Gazette of India, 1870, Pt. V, p. 5; for Proceedings in Council, *see ibid*, 1869, Supplement, p. 1506; *ibid*, 1870, Supplement, pp. 53, 57, 92 and 136.

and Bombay have no power to deal with the costs of petitions under section 4 of Act No. XXV of 1866 (*to transfer to the Government of India certain securities and moneys deposited in the High Courts of Judicature at Fort William, Madras and Bombay* [1]* * * * *) [2]* * * * for payment of certain securities, moneys or proceeds transferred to Government;

And whereas it is expedient to confer such power upon the said High Courts;

It is hereby enacted as follows:—

Power to direct by whom costs are to be paid.

1. Whenever any of the said Courts shall make an order on any such petition, the Court may direct by whom the whole or any part of the costs of each party are to be paid.

THE COURT-FEES ACT, 1870.

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[1] The words "and in the Supreme Court of the Straits Settlements and the proceeds of certain estates in the charge of the Administrator General of Bengal" were repealed by the Repealing Act, 1874 (XVI of 1874).

[2] The words "or under s. 60 of the Administrator General's Act, 1867" are omitted as the Administrator General's Act, 1867 (XXIV of 1867) and this Act so far as it relates to the Administrator General were repealed by the Administrator General's Act, 1874 (II of 1874), s. 2, *see infra.*

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APPENDIX.

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THE COURT-FEES ACT, 1870.[1]

[*11th March 1870.*]

CHAPTER I.

PRELIMINARY.

Short title. Extent of Act. Commencement of Act.

1. This Act may be called the Court-fees Act, 1870.
It extends to the whole of British India;
And it shall come into force on the first day of April, 1870.

[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1869, Pt. V, p. 57; for proceedings in Council, *see ibid*, 1869, Supplement, pp. 1179 and 1452; *ibid*, 1870, Supplement, pp. 52, 378, 421, 427 and 434.

For rules under the Act by the High Court, Madras, Appellate Side, *see* Fort St. George Gazette, Supplement, dated 20th December 1904, p. 1, and for Civil Rules of practice by the same Court, under this Act, the Civil Procedure Code and certain other Acts, for observance of the Subordinate Civil Courts in that Province, except the Small Cause Court at Madras, *see ibid*, 1905, Supplement, p. 1.

Act VII of 1870 has been declared in force—

in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (*1*), Sch. I, Bur. Code;

in British Baluchistan, by the British Baluchistan Laws Regulation (I of 1890), s. 3, Bal. Code;

in the Santhal Parganas, by the Santhal Parganas Settlement Regulation (III of 1872), as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899), Ben. Code;

in the sub-division of Angul, by the Angul District Regulation, 1894 (I of 1894), s. 3, Ben. Code.

It has further been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the following Scheduled Districts, namely :—

the District of Hazaribagh, Gazette of India, 1881, Pt. I, p. 507;

the District of Lohardaga (now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44; the District of Lohardaga then included the present District of Palamau, separated in 1894), *see* Gazette of India, 1881, Pt. I, p. 508;

the District of Manbhum, Gazette of India, 1881, Pt. I, p. 509;

the Pargana Dhalbhum in the District of Singbhum, Gazette of India, 1881, Pt. I, p. 510;

the Scheduled Districts in Ganjam and Vizagapatam, *see* Gazette of India, 1898, Pt. I, p. 869;

the Tarai of the Province of Agra, *see* Gazette of India, 1876, Pt. I, p. 505.

It has been extended by notification under s. 5 of the same Act to the Kolhan in the District of Singbhum, *see* Gazette of India, 1907, Pt. I, p. 655, and under ss. 5 and 5A of that Act to the following Scheduled Districts, namely :—the Garo Hills District, the Khasi and Jaintia Hills District, the Naga Hills District, the North Cachar Sub-division of the Cachar District, the Mikir Hill Tract in the Nowgong District and the Dibrugar Frontier Tract in the Lakhimpur District, provided that the Act does not apply to natives of these districts and tracts who are assessed to house-tax except in such places and cases as the Deputy Commissioner may withdraw from the operation of the exemption, *see* Assam Gazette, 1887, Pt. I, p. 861; Gazette of India, 1884, Pt. I, p. 164; the Lushai Hills, with the same proviso, *see* Gazette of India, 1904, Pt. I, p. 913, and Assam Gazette, 1904, Pt. II, p. 787.

"Chief controlling Revenue-authority" defined.

[1]2. In this Act, unless there is anything repugnant in the subject or context, "Chief Controlling Revenue-authority" means—

(*a*) in the Presidency of Fort St. George and the territories respectively under the administration of the Lieutenant-Governors of Bengal and the [2]North-Western Provinces and the Chief Commissioner[2] of Oudh — the Board of Revenue;

(*b*) in the Presidency of Bombay outside Sindh and the limits of the town of Bombay — a Revenue Commissioner;

(*c*) in Sindh — the Commissioner;

(*d*) in the Punjab[3] and Burma, including Upper Burma—the Financial Commissioner; and

(*e*) elsewhere—the Local Government or such officer as the Local Government may, by notification in the official Gazette,[4] appoint in this behalf.

CHAPTER II.

FEES IN THE HIGH COURTS AND IN THE COURTS OF SMALL CAUSES AT THE PRESIDENCY-TOWNS.

Levy of fees in High

3. The fees payable for the time being to the clerks and officers (other than the sheriffs and attorneys) of the High Courts established

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The Act came into permanent operation in Aden on 1st April, 1876, *see* Bombay Government Gazette, 1876, Pt. I, p. 956.

It has been declared inapplicable to proceedings before officers making a settlement, and in certain other cases under the Santhal Parganas Settlement Regulation (III of 1872), s. 8, as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (3 of 1899), Ben. Code.

The Act has been amended in Upper Burma by the Upper Burma Civil Courts Regulation, 1896 (I of 1896), s. 36, Bur. Code; in the Punjab—by the Punjab Courts Act, 1884 (XVIII of 1884), s. 71, P. and N.-W. Code; and in Lower Burma by the Lower Burma Courts Act, 1900 (VI of 1900), s. 47.

[1] The present s. 2 was added by s. 2 of the Court-fees (Amendment) Act. 1901 (X of 1901), Genl. Acts, Vol. V. The original section relating to repeal of enactments was repealed by the Repealing Act, 1870 (XIV of 1870).

[2] These Provinces are now known as the United Provinces of Agra and Oudh and the Lieutenant-Governor and Chief Commissioner as the Lieutenant-Governor of these Provinces, *see* Proclamation No. 9196 P., dated the 22nd March, 1902. Gazette of India, 1902, Pt. I, p. 228, and the United Provinces Designation Act, 1902 (VII of 1902), General Acts, Vol. V.

[3] As to the N.-W. F. Province, *see* the N.-W. F. Province Law and Justice Regulation, 1901 (VII of 1901), s. 6 (1) (*d*), P. and N.-W. Code.

[4] For officer appointed for —

(1) the Island of Bombay, *see* Bombay Government Gazette, 1902, Pt. I, p. 35;

(2) Baluchistan, *see* Gazette of India, 1908, Pt. I, p. 389; and

(3) The Assam Valley Districts and certain parts of the district of Cachar, *see* E. B. & A. Gazette, 1905, Pt. I, p. 5.

Courts on their original sides.

by Letters Patent, by virtue of the power conferred by [1] Statute 24 & 25 of Victoria, Chapter 104, section 15,

or chargeable in each of such Courts under No. 11 of the first, and Nos. 7, 12, 14,[2] * 20 and 21 of the second schedule to this Act annexed;

Levy of fees in Presidency Small Cause Courts.

and the fees for the time being chargeable in the Courts of Small Causes at the [3]Presidency-towns, and their several offices,

shall be collected in manner hereinafter appearing.

Fees on documents filed, etc., in High Courts in their extraordinary jurisdiction;

4. No document of any of the kinds specified in the first or second schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction;

or in the exercise of its extraordinary original criminal jurisdiction;

in their appellate jurisdiction:

or in the exercise of its jurisdiction as regards appeals from the judgment of two or more Judges of the said Court, or of a division Court;

or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence;

as Courts of reference and revision.

or in the exercise of its jurisdiction as a Court of reference or revision;

unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

Procedure in case of difference as to necessity or amount of fee.

5. When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter and any suitor or attorney, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in any of the said High Courts, be referred to the taxing-officer, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of such High Court, or of such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf.

When any such difference arises in any of the said Courts of Small Causes, the question shall be referred to the Clerk of the Court, whose

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[1] *See* the Indian High Courts Act, 1861 (24 & 25 Vict., c. 104), Coll. Stat., Vol. I.

[2] The number "sixteen" was repealed by the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol. IV.

[3] *See* the Presidency Small Cause Courts Act, 1882 (XV of 1882), Ch. X, General Acts, Vol. III.

decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the first Judge of such Court.

The Chief Justice shall declare who shall be taxing-officer within the meaning of the first paragraph of this section.

CHAPTER III.

FEES IN OTHER COURTS AND IN PUBLIC OFFICES.

Fees on documents filed, etc., in Mufassal Courts or in public offices.

6. Except in the Courts hereinbefore mentioned, no document of any of the kinds specified as chargeable in the first or second schedule to this Act annexed shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

Computation of fees payable in certain suits for money;

7. The amount of fee payable under this Act in the suits[1] next hereinafter mentioned shall be computed as follows:—

i. In suits for money (including suits for damages or compensation, or arrears of maintenance of annuities, or of other sums payable periodically)—according to the amount claimed:

for maintenance and annuities;

ii. In suits for maintenance and annuities or other sums payable periodically—according to the value of the subject-matter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year:

for moveable property having a market-value;

iii. In suits for moveable property other than money, where the subject-matter has a market-value—according to such value at the date of presenting the plaint:

iv. In suits—

for moveable property of no market-value;

(*a*) for moveable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title,

to enforce a right to share in joint family property;

(*b*) to enforce the right to share in any property on the ground that it is joint family property,

for a declaratory decree and consequential relief;

(*c*) to obtain a declaratory decree or order, where consequential relief is prayed,

[1] For the amount of fee payable in certain suits and proceedings under the Agra Tenancy Act, 1901 (U. P. Act II of 1901), *see* s. 170 of that Act, U. P. Code.

for an injunction; for easements;

(*d*) to obtain an injunction,

(*e*) for a right to some benefit (not herein otherwise provided for) to arise out of land, and

for accounts;

(*f*) for accounts—

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal:

In all such suits the plaintiff shall state the amount at which he values the relief sought [1] * * * :

for possession of lands, houses and gardens;

v. In suits for the possession of land, houses and gardens—according to the value of the subject-matter; and such value shall be deemed to be—

where the subject-matter is land, and—

(*a*) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government,

or forms part of such an estate and is recorded in the Collector's register as separately assessed with such revenue,

and such revenue is permanently settled—

ten times the revenue so payable:

(*b*) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such estate and is recorded as aforesaid;

and such revenue is settled, but not permanently—

five times the revenue so payable:

(*c*) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue,

and nett profits have arisen from the land during the year next before the date of presenting the plaint—

fifteen times such nett profits:

but where no such nett profits have arisen therefrom—the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood:

(*d*) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as above-mentioned—the market-value of the land:

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[1] The words "and the provisions of the Code of Civil Procedure, section thirty-one, shall apply as if for the word 'claim' the words 'relief sought' were substituted" were repealed by the Repealing and Amending Act, 1891 (XII of 1891).

Provided that, in the territories subject to the Governor of Bombay in Council the value of the land shall be deemed to be— Proviso as to Bombay Presidency;

(1) where the land is held on settlement for a period not exceeding thirty years and pays the full assessment to Government—a sum equal to five times the survey-assessment;

(2) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government—a sum equal to ten times the survey-assessment; and

(3) where the whole or any part of the annual survey-assessment is remitted—a sum computed under paragraph (1) or paragraph (2) of this proviso, as the case may be, in addition to ten times the assessment, or the portion of assessment, so remitted:

Explanation.—The word "estate", as used in this paragraph, means any land subject to the payment of revenue, for which the proprietor or farmer or raiyat shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue:

(*e*) Where the subject-matter is a house or garden— for houses and gardens;

according to the market-value of the house or garden:

vi. In suits to enforce a right of pre-emption—according to the value (computed in accordance with paragraph v of this section) of the land, house or garden in respect of which the right is claimed: to enforce a right of pre-emption;

vii. In suits for the interest of an assignee of land-revenue—fifteen times his nett profits as such for the year next before the date of presenting the plaint: for interest of assignee of land-revenue;

viii. In suits to set aside an attachment of land or of an interest in land or revenue—according to the amount for which the land or interest was attached: to set aside an attachment;

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest.

ix. In suits against a mortgagee for the recovery of the property mortgaged, to redeem;

and in suits by a mortgagee to foreclose the mortgage, to foreclose;

or, where the mortgage is made by conditional sale, to have the sale declared absolute—

according to the principal money expressed to be secured by the instrument of mortgage:

for specific performance;

x. In suits for specific performance—

(*a*) of a contract of sale—according to the amount of the consideration:

(*b*) of contract of mortgage—according to the amount agreed to be secured:

(*c*) of a contract of lease—according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term:

(*d*) of an award—according to the amount or value of the property in dispute:

between landlord and tenant.

xi. In the following suits between landlord and tenant:—

(*a*) for the delivery by a tenant of the counterpart of a lease,

(*b*) to enhance the rent of a tenant having a right of occupancy,

(*c*) for the delivery by a landlord of a lease,

[1](*cc*) for the recovery of immoveable property from a tenant, including a tenant holding over after the determination of a tenancy,

(*d*) to contest a notice of ejectment,

(*e*) to recover the occupancy of [2][immoveable property] from which a tenant has been illegally ejected by the landlord, and

(*f*) for abatement of rent—

according to the amount of the rent of the [2][immoveable property] to which the suit refers, payable for the year next before the date of presenting the plaint.

Fee on memorandum of appeal against order relating to compensation.

8. The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the [2]acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

Power to ascertain nett profits or market-value.

9. If the Court sees reason to think that the annual nett profits or the market-value of any such land, house or garden as is mentioned in section 7, paragraphs 5 and 6, have or has been wrongly estimated, the Court may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.

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[1] This clause was inserted by the Court-fees (Amendment) Act 1905 (VI of 1905), s. 2 (*1*), Genl. Acts, Vol. VI.

[2] These words were substituted for the word "land" by s. 2 (*2*) of the Court-fees (Amendment) Act, 1905 (VI of 1905), Genl. Acts, Vol. VI.

[3] *See* now the Land Acquisition Act, 1894 (I of 1894), Genl. Acts, Vol. IV.

Procedure where nett profits or market-value wrongly estimated.

10. i. If in the result of any such investigation the Court finds that the nett profits or market-value have or has been wrongly estimated, the Court, if the estimation has been excessive, may in its discretion refund the excess paid as such fee: but, if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market-value or nett profits been rightly estimated.

ii. In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

[1] * * * * * *

Procedure in suits for mesne profits or account when amount decreed exceeds amount claimed.

11. In suits for mesne profits or for immoveable property and mesne profits, or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer.

Where the amount of mesne profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

Decision of question as to valuation.

12. i. Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit.

ii. But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of section 10, paragraph ii, shall apply.

Fee paid on mem

13. If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the [2]Code of Civil Procedure,

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[1] Clause (iii) was repealed by the Repealing and Amending Act, 1891 (XII of 1891). The clause was as follows :—" Section 180 of the Code of Civil Procedure shall be construed as if the words ' the market-value of any property or ' were inserted after the word ' ascertaining ' and as if the words ' or annual nett profits ' were inserted after the word 'damages '."

[2] This reference should now be read as applying to Act V of 1908, Genl. Acts, Vol. VI.

dum of appeal.

is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in [1]section 351 of the same Code for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal:

Provided that if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

Refund of fee on application for review of judgment.

14. Where an [2]application for a review of judgment is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before [3] such day.

Refund where Court reverses or modifies its former decision on ground of mistake.

15. Where an application for a review of judgment is admitted, and where, on the rehearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorizing him to receive back from the Collector so much of the fee paid on the [4][application] as exceeds the fee payable on any other application to such Court under the second schedule to this Act, No. 1, clause (*b*) or clause (*d*).

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing.

16. [*Additional fee where respondent takes objection to unappealed part of decree.*] *Rep. Act V of 1908.*

Multifarious suits.

17. Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in

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[1] This reference should now be read as applying to the corresponding provision of Act V of 1908.

[2] As to refund of fees paid on applications to the Chief Court or the Court of the Financial Commissioner of the Punjab for the exercise of its revisional jurisdiction under the Code of Civil Procedure—*see* the Punjab Courts Act, 1884 (XVIII of 1884), s. 72, as amended by the Punjab Courts Act, 1889 (XXV of 1899), P. and N.-W. Code.

As to application for review of judgment, *see* the Code of Civil Procedure, 1908 (Act V of 1908), Genl. Acts, Vol. VI.

[3] *See* Sch. I, Nos. 4 and 5, *infra*.

[4] The word "application" was substituted for the original words "plaint or memorandum of appeal" by the Court-fees Act Amendment Act, 1870 (XX of 1870), s. 1 (amending this Act), Genl. Acts, Vol. II.

suits embracing separately each of such subjects would be liable under this Act.

Nothing in the former part of this section shall be deemed to affect the power conferred by the [1] Code of Civil Procedure, section 9.

Written examinations of complainants.

18. When the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which police-officers may arrest without a warant, and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing under the provisions of the [2] Code of Criminal Procedure, the complainant shall pay a fee of eight annas, unless the Court thinks fit to remit such payment.

Exemption of certain documents.

19. Nothing contained in this Act shall render the following documents chargeable with any fee:—

i. Power-of-attorney to institute or defend a suit when executed by an officer, warrant-officer, non-commissioned officer or private of Her Majesty's army not in civil employment.

ii. [*Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*]

iii. Written statements called for by the Court after the first hearing of a suit.

iv. [*Rep. by the Cantonments Act, 1889 (XIII of 1889).*]

v. Plaints in suits tried by [3] Village Munsifs in the Presidency of Fort St. George.

vi. Plaints and processes in suits before District Panchayats in the same Presidency.

vii. Plaints in suits before Collectors under [4] Madras Regulation XII of 1816.

viii. Probate of a will, letters of administration, [5][and, save as regards debts and securities, a certificate under [6] Bombay Regulation VIII of 1827], where the amount or value of the property in respect of which the probate or letters or certificate shall be granted does not exceed one thousand rupees.

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[1] *See* now Code of Civil Procedure (Act V of 1908), Genl. Acts, Vol. VI.

[2] This reference should now be read as referring to the Code of Criminal Procedure (Act V of 1898)—*see* s. 3 of that Act, Genl. Acts, Vol. V.

[3] *See* the Madras Village Courts Act, 1889 (I of 1889), Mad. Code.

[4] Mad. Code.

[5] These words were substituted for the original words and figures "and certificate mentioned in the First Schedule to this Act annexed, No. 12," by the Succession Certificate Act, 1889 (VII of 1889), s. 13 (*2*), Genl. Acts, Vol. IV.

[6] Bom. Code.

(*Chapter III.—Fees in other Courts and in Public Offices.*)

ix. Application or petition to a Collector or other officer making a settlement of land-revenue, or to a Board of Revenue, or a Commissioner of Revenue, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interests therein, if presented previous to the final confirmation of such settlement.

x. Application relating to a supply for irrigation of water belonging to Government.

xi. Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land-revenue by a person holding, under direct engagement with Government, land of which the revenue is settled, but not permanently.

xii. Application for service of notice of relinquishment of land or of enhancement of rent.

xiii. Written authority to an agent to distrain.

xiv. First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document or in respect of the production or filing of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.

xv. Bail-bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise.

xvi. Petition, application, charge or information respecting any offence when presented, made or laid to or before a Police-officer, or to or before the [1] Heads of Villages or the [2] Village Police in the territories respectively subject to the Governors in Council of Madras and Bombay.

xvii. Petition by a prisoner, or other person in duress or under restraint of any Court or its officers.

xviii. Complaint of a public servant (as defined in the [3] Indian Penal Code), a municipal officer, or an officer or servant of a Railway Company. XLV of 1860

xix. Application for permission to cut timber in Government forests, or otherwise relating to such forests.

xx. Application for the payment of money due by Government to the applicant.

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[1] *See* Madras Regulations XI of 1816 and IV of 1821, s. 6, Mad. Code.
[2] *See* Bombay Village Police Act (8 of 1867), ss. 14, 15 and 16, Bom. Code.
[3] Genl. Acts, Vol. I.

xxi. Petition of appeal against the [1] chaukidari assessment under Act No. XX of 1856, or against any municipal tax.

xxii. Applications for compensation under any law for the time being in force relating to the acquisition of property for public purposes.[2]

xxiii. Petitions presented to the Special Commissioner appointed under [3] Bengal Act No. II of 1869 (*to ascertain, regulate and record certain tenures in Chota Nagpore*).

XV of 1872. [4] xxiv. [Petitions under the [5]Indian Christian Marriage Act, 1872, sections 45 and 48.]

CHAPTER IIIA.[6]

PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION.

Relief where too high a court-fee has been paid.

19A. Where any person on applying for the probate of a will or letters of administration has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid too high a court-fee thereon, if, within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Chief Controlling Revenue-authority [7][for the local area] in which the probate or letters has or have been granted,

and delivers to such Authority a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation,

and if such Authority is satisfied that a greater fee was paid on the probate or letters than the law required,

the said Authority may—

(*a*) cancel the stamp on the probate or letters if such stamp has not been already cancelled;

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[1] U. P. Code.

[2] *See* now the Land Acquisition Act, 1894 (I of 1894), Genl. Acts, Vol. IV.

[3] Bengal Code.

[4] This clause was substituted for the original clause by the Indian Christian Marriage Act, 1872 (XV of 1872), s. 2, *infra*. The original clause was as follows :—" petitions under the 14th and 15th of Victoria, Ch. 40 (*an Act for marriages in India*), s. 5, or under Act No. 5 of 1852, s. 9."

[5] *Infra.*

[6] Chapter IIIA was inserted by the Probate and Administration Act, 1875 (XIII of 1875), s. 6, *infra*.

[7] Substituted for the words "of the Province" by s. 3 (*1*) of the Court-fees (Amendment) Act, 1901 (X of 1901). Genl. Acts, Vol. V.

(*b*) substitute another stamp for denoting the court-fee which should have been paid thereon; and

(*c*) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

Relief where debts due from a deceased person have been paid out of his estate.

19B. Whenever it is proved to the satisfaction of such Authority that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less court-fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act,

such Authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said Authority may allow such further time for making the claim as may appear to be reasonable under the circumstances.

Relief in case of several grants.

19C. Whenever [1] * a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

Probates declared valid as to trust-property though not covered by court-fee.

19D. The probate of the will or the letters of administration of the effects of any person deceased heretofore or hereafter granted shall be deemed valid and available by his executors or administrators for recovering, transferring or assigning any moveable or immoveable property whereof or whereto the deceased was possessed or entitled, either wholly or partially as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a court-fee was paid on such probate or letters of administration.

[1] The word " such " was repealed by the Repealing and Amending Act, 1891 (XII of 1891).

(Chapter IIIA.—Probates, Letters of Administration and Certificates of Administration.)

Provision for case where too low a court-fee has been paid on probates, etc.

[1] **19E.** Where any person on applying for probate or letters of administration has estimated the estate of the deceased to be of less value than the same has afterwards proved to be, and has in consequence paid too low a court-fee thereon, the Chief Controlling Revenue-authority [2][for the local area] in which the probate or letters has or have been granted may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full court-fee which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from the date of grant, of five times, or, if it or they is or are produced after one year from such date, of twenty times, such proper court-fee, without any deduction of the court-fee originally paid on such probate or letters :

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a court-fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid in consequence of a mistake or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper court-fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

Administrator to give proper security before letters stamped under section 19E.

19F. In case of letters of administration on which too low a court-fee has been paid at first, the said Authority shall not cause the same to be duly stamped in manner aforesaid until the administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased had been then ascertained.

Executors, etc., not paying full court-fee on probates, etc., within

[3] **19G.** Where too low a court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such

[1] As to power of Chief Controlling Revenue-authority to remit the whole or part of any penalty or forfeiture payable under section 19E, *see* the Probate and Administration Act, 1889 (VI of 1889), s. 20 (*2*), Genl. Acts, Vol. IV.

[2] Substituted for the words " of the Province " by s. 3 (*1*) of the Court-fees (Amendment) Act, 1901 (X of 1901), Genl. Acts, Vol. V.

[3] As to recovery of penalties or forfeitures under s. 19G, *see infra*, s. 19J.

six months after discovery of under-payment.

probate or letters does not, within six months [1] * * * * * after the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, apply to the said Authority and pay what is wanting to make up the court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees and also a further sum at the rate of ten rupees per cent. on the amount of the sum wanting to make up the proper court-fee.

Notice of applications for probate or letters of administration to be given to Revenue-authorities, and procedure thereon.

[2] **19H.** (*1*) Where an application for probate or letters of administration is made to any Court other than a High Court, the Court shall cause[3] notice of the application to be given to the Collector.

(*2*) Where such an application as aforesaid is made to a High Court, the High Court shall cause notice of the application to be given to the Chief Controlling Revenue-authority [4][for the local area in which the High Court is situated].

(*3*) The Collector within the local limits of whose revenue-jurisdiction the property of the deceased or any part thereof is, may at any time inspect or cause to be inspected, and take or cause to be taken copies of, the record of any case in which application for probate or letters of administration has been made; and if, on such inspection or otherwise, he is of opinion that the petitioner has under-estimated the value of the property of the deceased, the Collector may, if he thinks fit, require the attendance of the petitioner (either in person or by agent) and take evidence and inquire into the matter in such manner as he may think fit, and, if he is still of opinion that the value of the property has been under-estimated, may require the petitioner to amend the valuation.

(*4*) If the petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court before which the application for probate or letters of administration was made, to hold an inquiry into the true value of the property:

Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory required

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[1] The words and figures " after the first day of April 1875, or " were repealed by the Repealing and Amending Act, 1891 (XII of 1891), Genl. Acts, Vol. IV.

[2] Sections 19H, 19I, 19J & 19K were inserted by the Court-fees Amendment Act, 1899 (XI of 1899), s. 2, Genl. Acts, Vol. V.

[3] For form of notice under this clause prescribed by the Chief Court of Lower Burma, *see* Burma Gazette, 1902, Pt. IV, p. 625.

[4] Substituted for the words " of the Provinces " by s. 3 (*2*) of the Court-fees Amendment Act, 1901 (X of 1901), Genl. Acts, Vol. V.

X of 1865. V of 1881.

by section 277 of the [1] Indian Succession Act, 1865, or, as the case may be, by section 98 of[2] the Probate and Administration Act, 1881.

(*5*) The Court, when so moved as aforesaid, shall hold, or cause to be held, an inquiry accordingly, and shall record a finding as to the true value, as near as may be, at which the property of the deceased should have been estimated. The Collector shall be deemed to be a party to the inquiry.

(*6*) For the purposes of any such inquiry, the Court or person authorized by the Court to hold the inquiry may examine the petitioner for probate or letters of administration on oath (whether in person or by commission), and may take such further evidence as may be produced to prove the true value of the property. The person authorized as aforesaid to hold the inquiry shall return to the Court the evidence taken by him and report the result of the inquiry, and such report and the evidence so taken shall be evidence in the proceeding, and the Court may record a finding in accordance with the report, unless it is satisfied that it is erroneous.

(*7*) The finding of the Court recorded under sub-section (*5*) shall be final, but shall not bar the entertainment and disposal by the Chief Controlling Revenue-authority of any application under section 19E.

(*8*) The Local Government may make rules for the guidance of Collectors in the exercise of the powers conferred by sub-section (*3*).

Payment of court-fees in respect of probates and letters of administration.

[3]**19I.** (*1*) No order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the third schedule, and the Court is satisfied that the fee mentioned in No. 11 of the first schedule has been paid on such valuation.

(*2*) The grant of probate or letters of administration shall not be delayed by reason of any motion made by the Collector under section 19H, sub-section (*4*).

Recovery of penalties, etc.

[3]**19J.** (*1*) Any excess fee found to be payable on an inquiry held under section 19H, sub-section (*6*), and any penalty or forfeiture under section 19G, may, on the certificate of the Chief Controlling Revenue-authority, be recovered from the executor or administrator as if it were an arrear of land-revenue by any Collector in any part of British India.

(*2*) The Chief Controlling Revenue-authority may remit the whole or any part of any such penalty or forfeiture as aforesaid, or any part

[1] Genl. Acts. Vol. I.
[2] Genl. Acts, Vol. III.
[3] Inserted by s. 2 of the Court-fees Amendment Act, 1899 (XI of 1899), Genl. Acts, Vol. V.

of any penalty under section 19E or of any court-fee under section 19E in excess of the full court-fee which ought to have been paid.

Sections 6 and 28 not to apply to probate or letters of administration.

[1] **19K.** Nothing in section 6 or section 28 shall apply to probates or letters of administration.

CHAPTER IV.

PROCESS-FEES.

Rules as to cost of processes.

20. The High Court shall, as soon as may be, make rules [2] as to the following matters [3] :—

i. The fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil [4] and Revenue [4] Courts established within the local limits of such jurisdiction;

ii. the fees chargeable for serving and executing processes issued by the Criminal Courts established within such limits in the case of offences

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[1] Inserted by s. 2 of Act XI of 1899.

[2] As to the power to make rules and prescribe fees for processes in Lower Burma, *see* the Lower Burma Courts Act, 1900 (VI of 1900), s. 41. As to power of the Judicial Commissioner to make rules and regulate the fees to be paid for civil processes in Upper Burma, *see* the Upper Burma Civil Courts Regulation, 1896 (I of 1896), s. 30 (*l*) (*a*), Bur. Code. As to power of the Bombay High Court to prescribe fees for processes issued by Courts constituted under the Bombay Civil Courts Act, 1869 (XIV of 1869), *see* s. 42 of that Act, Bom. Code. As to fees on certain applications under s. 170 of the Agra Tenancy Act, 1901 (U. P. Act II of 1901), *see* U. P. Code.

As to power of Chief Commissioner of British Baluchistan to make rules and prescribes fees, *see* the British Baluchistan Criminal Justice Regulation, 1896 (VIII of 1896), s. 20 (*l*) (*a*), and the British Baluchistan Civil Justice Regulation, 1896 (IX of 1896), s. 92 (*a*), Bal. Code.

[3] For notifications issued under the powers conferred by this section in—

Ajmer-Merwara in conjunction with s 22 . . .	*see* Aj. R. and O.
Bombay	*see* Bom. R. and O., Vol. I.
Burma	*see* Burma Gazette, 1900, Pt. I, p. 325.
Madras	*see* Mad. R. and O.
United Provinces of Agra and Oudh	*see* U. P. R. and O., and U. P. Gazette, 1904, Pt. I, p. 261.

For rules as to fees for serving and executing processes, *see* U. P. of Agra and Oudh Gazette, 1903, Pt. 1, p. 45.

For rules by Judicial Commissioner, Oudh, as to refund of process-fees by Revenue Courts, *see* U. P. Gazette, 1902, Pt. 1, p. 708.

For Revenue Courts in Oudh, *see* U. P. Gazette, 1903, Pt. I, p. 46, and *ibid*, 1904, Pt. 1, p. 261.

Central Provinces . . . *see* C. P. R. and O., and Central Provinces Gazette, 1902, Pt. II, p. 466, and *ibid*, 1904, Pt. III, p. 373 (as to criminal processes).

[4] In the Punjab, the words " and revenue " are repealed, *see* the Punjab Land-revenue Act, 1887 (XVII of 1887), P. and N.-W. Code.

other than offences for which police-officers may arrest without a warrant; and

iii. the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may from time to time alter and add to the rules so made.

All such rules, alterations and additions shall, after being confirmed by the Local Government and sanctioned by the Governor General of India in Council, be published in the local official Gazette, and shall thereupon have the force of law. Confirmation and publication of rules.

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

21. A table in the English and Vernacular languages, showing the fees chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court. Tables of process-fees.

22. Subject to [1] rules to be made by the High Court and approved by the Local Government and the Governor General of India in Council, Number of peons in District and subordinate Courts.

every District Judge and every Magistrate of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Courts subordinate thereto,

and for the purposes of this section, every Court of Small Causes established under Act No. XI of 1865 (*to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*)[2] shall be deemed to be subordinate to the Court of the District Judge. Number of peons in Mufassal Small Cause Courts.

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[1] For rules made under the powers conferred by this section in—

Assam, by the High Court, Calcutta	*see* Assam Gazette, 1902, Pt. IIA, p. 824.
Ajmer-Merwara . . .	*see* Aj. R. and O.
Bombay	*see* Bom. R. and O.
Madras	*see* Mad. R. and O., and Fort St. George Gazette, 1901, Pt. I, p. 1904.
United Provinces and Oudh .	*see* U. P. R. and O.
Central Provinces . . .	*see* C. P. R. and O.

As to Burma, *see* s. 41 of the Lower Burma Courts Act, 1900 (VI of 1900).

[2] The reference to Act XI of 1865 should now be read as to the Provincial Small Causes Courts Act, 1887 (IX of 1887), s. 2 (*2*) and (*3*), printed, Genl. Acts, Vol. IV.

Number of peons in Revenue Courts.

[1]**23.** Subject to rules [2] to be framed by the Chief Controlling Revenue-authority[1] and approved by the Local Government and the Governor General of India in Council, every officer performing the functions of a Collector of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court or the Courts subordinate to him.

24. [*Process served under this Chapter to be held to be process within meaning of Code of Civil Procedure.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

CHAPTER V.

Of the Mode of Levying Fees.

Collection of fees by stamps.

25. All fees referred to in section 3 or chargeable under this Act shall be collected by stamps.

Stamps to be impressed or adhesive.

26. The stamps used to denote any fees chargeable under this Act shall be impressed or adhesive, or partly impressed and partly adhesive, as the Governor General of India in Council may, by notification in the Gazette of India, from time to time direct.[3]

Rules for supply, number, renewal and keeping accounts of stamps.

27. The Local Government may, from time to time, make [4] rules for regulating—

[5](*a*) the supply of stamps to be used under this Act;

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[1] In the Punjab, s. 23 is repealed—*see* the Punjab Land-revenue Act, 1887 (XVII of 1887), P. and N. W. Code.

[2] For rules framed under the powers conferred by this section in—

Madras . . . . . *see* Mad. R. and O.
Central Provinces . . . *see* Cen. Prov. Gazette, 1905, Pt. III, p. 570.
Assam . . . . . *see* Assam Rules Manual.

As to Burma *see* s. 41 of the Lower Burma Courts Act, 1900 (VI of 1900).

[3] For rules as to levy of court-fees by adhesive and impressed stamps, *see* Gazette of India, 1883, Pt. I, p. 189.

[4] For rules under s. 27 for—

(*1*) Ajmer-Merwara, *see* Aj. R. & O.
(*2*) Baluchistan, *see* Bal. Code.
(*3*) Bengal, *see* Ben. R. & O.
(*4*) Bombay, *see* Bom. R. & O.
(*5*) Burma, *see* Burma Gazette, 1902, Pt. I, p. 9.
(*6*) Central Provinces, *see* Cen. Prov. Gazette, 1902, Pt. III, p. 69.
(*7*) Coorg, *see* Coorg R. and O.
(*8*) Eastern Bengal & Assam, *see* E. B. & A. Gazette, 1908, Pt. II, p. 642.
(*9*) Madras, *see* Mad. R. & O.
(*10*) N. W. Fron. Prov., *see* Gazette of India, 1902, Pt. II, p. 98.
(*11*) Punjab, *see* Punj. R. & O.
(*12*) United Provinces, *see* U. P. R. & O.

[5] For rules as to levy of court-fees by adhesive and impressed stamps, *see* Gazette of India, 1883, Pt. I, p. 189.

(*b*) the number of stamps to be used for denoting any fee chargeable under this Act;

(*c*) the renewal of damaged or spoiled stamps; and

(*d*) the keeping accounts of all stamps used under this Act:

Provided that, in the case of stamps used under section 3 in a High Court, such rules shall be made with the concurrence of the Chief Justice of such Court.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

Stamping documents inadvertently received.

28. No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped.

But, if any such document is through mistake or inadvertence received, filed or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct; and, on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

Amended document.

29. Where any such document is amended in order merely to correct a mistake and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

Cancellation of stamp.

30. No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

Such officer as the Court or the head of the office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

CHAPTER VI.

MISCELLANEOUS.

Repayment of fees paid on applications to Criminal Courts.

31. i. Whenever an application or petition containing a complaint or charge of an offence, other than an offence for which police-officers may arrest without warrant, is presented to a Criminal Court, the Court, if it convict the accused person, shall, in addition to the penalty imposed

upon him, order him to repay to the complainant the fee paid on such application or petition.

ii. In the case mentioned in section 18, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee, if any, paid by the latter for the examination.

iii. When the complainant has paid fees for serving processes in either of the cases mentioned in the first and second paragraphs of this section, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay such fees to the complainant.

iv. All fees ordered to be repaid under this section may be recovered as if they were fines imposed by the Court.

32. [*Amendment of Act VIII of 1859 and Act IX of 1869.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

Admission in criminal cases of documents for which proper fee has not been paid.

33. Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in section 4 or section 6 shall be deemed to prohibit such filing or exhibition.

Sale of stamps.

[1] **34.** (*1*) The Local Government may from time to time make [2] rules for regulating the sale of stamps to be used under this Act, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

(*2*) All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

(*3*) Any person appointed to sell stamps who disobeys any rule made under this section, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

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[1] This section was substituted for the original section by the Repealing and Amending Act, 1891 (XII of 1891), Genl. Acts, Vol. IV.

[2] For rules made by :—

Ajmer-Merwara . . .	*see* Gazette of India, 1903, Pt. II, p. 1068.
Bengal	*see* Ben. R. & O., and Calcutta Gazette, 1907, Pt. I, p. 432.
Bombay	*see* Bombay R. & O., Bombay Government Gazette, 1907, Pt. I, p. 723.
Burma	*see* Burma Gazette, 1902, Pt. I, p. 59.
Central Provinces . .	*see* Central Provinces Gazette, 1902, Pt. III, p. 70; *ibid*, 1903, Pt. III, p. 47.
Eastern Bengal and Assam .	*see* E. B. and Assam Gazette, 1908, Pt. II, p. 642.
Punjab	under this section, *see* Punjab Government Gazette, 1900, Pt. I, p. 406.
United Provinces . . .	*see* North-Western Provinces and Oudh Gazette, 1900, Pt. I, p. 621.

(*Chapter VI.—Miscellaneous.*)

Power to reduce or remit fees.

35. The Governor General of India in Council may, from time to time by [1] notification in the Gazette of India, reduce or remit [2], in the whole or in any part of British India, all or any of the fees mentioned in the first and second schedules to this Act annexed,

and may in like manner cancel or vary such order.

Saving of fees to certain officers of High Courts.

36. Nothing in Chapters II and V of this Act applies to the commission payable to the Accountant General of the High Court at Fort William, or to the fees which any officer of a High Court is allowed to receive in addition to a fixed salary.

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[1] *See* Gen. R. and O.

[2] For remission of duty payable under the Act, in respect of Indian probates, letters of administration or succession certificates on the share or other interest of a deceased member of a company formed under Act VI of 1882, provided that the said share or interest was registered in a branch register in the United Kingdom under Act IV of 1900, and that such member was at the date of his decease domiciled elsewhere than in India, *see* notification No. 881 L. R., Gazette of India, 1900, Pt. 1, p. 100.

For remission of duty on applications for suspension or remission of land-revenue, *see* Notification No. 4385 L. R., dated 19th August, 1901, Gazette of India, 1901, Pt. I, p. 606.

For remission of fees on applications for issue of permits for transport of country spirits, *see* Notification No. 6260 L. R., dated 12th December, 1901, Gazette of India, 1901, Pt. I, p. 1030.

SCHEDULE I.

Ad valorem fees.

Number.		Proper Fee.
1. *Plaint [1] [written statement pleading a set off or counter-claim] or memorandum of appeal (not otherwise provided for in this Act) [1] [or of cross-objection] presented to any Civil or Revenue Court except those mentioned in section 3.	When the amount or value of the subject-matter in dispute does not exceed five rupees.	Six annas.
	When such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees.	Six annas.
	When such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees.	Twelve annas.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to five thousand rupees.	Five rupees.
	When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees.	Ten rupees.
	When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees.	Fifteen rupees.
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees.	Twenty rupees.

* To ascertain the proper fee leviable on the institution of a suit, *see* the table annexed to this schedule.

[1] These words were inserted by s. 155 and the Fourth Schedule of the Code of Civil Procedure (Act V of 1908), Genl. Acts, Vol. VI.

SCHEDULE I—*contd.*

Ad valorem fees—contd.

Number.		Proper Fee.
1. * Plaint, etc.—*contd.*	When such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees.	Twenty rupees.
	When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees.	Twenty-five rupees.
	Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be three thousand rupees.	
2. Plaint [1]* * * in a suit for possession under [2][the Specific Relief Act, 1877, section 9].	.. ..	A fee of one-half the amount prescribed in the foregoing scale.
3. [*Repealed by Act VIII of* 1871.]		
4. Application for review of judgment, [3] if presented on or after the ninetieth day from the date of the decree.		The fee leviable on the plaint or memorandum of appeal.
5. Application for review of judgment, [3] if presented before the ninetieth day from the date of the decree.		One-half of the fee leviable on the plaint or memorandum of appeal.
6. Copy or translation of a judgment or order not being, or having the force of, a decree.	When such judgment or order is passed by any Civil Court other than a High Court, or by the presiding officer of any Revenue Court or Office, or by any other Judicial or Executive Authority—	
	(*a*).—If the amount or value of the subject-matter is fifty or less than fifty rupees.	Four annas.

*To ascertain the proper fee leviable on the institution of a suit, *see* the table annexed to this schedule.

[1] The words "or memorandum of appeal" were repealed by the Court-fees Act Amendment Act, 1870 (XX of 1870), *infra*.

[2] These words were substituted for the words and figures "Act No. XIV of 1859 (*to provide for the limitation of suits*)" by the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol. IV. For the Specific Relief Act, 1877 (I of 1877), *see infra*.

[3] As to application for review of judgment, *see* the Code of Civil Procedure (Act V of 1908), General Acts, Vol. VI.

SCHEDULE I—*contd.*

Ad valorem fees—contd.

Number.		Proper Fee.
6. Copy, etc.—*contd.*	(*b*).—If such amount or value exceeds fifty rupees.	Eight annas.
	When such judgment or order is passed by a High Court.	One rupee.
7. Copy of a decree or order having the force of a decree.	When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court—	
	(*a*).—If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees.	Eight annas.
	(*b*).—If such amount or value exceeds fifty rupees.	One rupee.
	When such decree or order is made by a High Court.	Four rupees.
8. Copy of any document liable to stamp-duty under the Indian Stamp Act, 1879,[1] when left by any party to a suit or proceeding in place of the original withdrawn.	(*a*).—When the stamp-duty chargeable on the original does not exceed eight annas.	The amount of the duty chargeable on the original. I of 1879.
	(*b*).—In any other case.	Eight annas.
9. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report or the like, taken out of any Civil or Criminal or Revenue Court or Office, or from the office of any chief officer charged with the executive administration of a Division.	For every three hundred and sixty words or fraction of three hundred and sixty words.	Eight annas.
10. [*Repealed by the Guardians and Wards Act*, 1890 (*VIII of 1890*).]		
[2]11. Probate of a will or letters of administration with or without will annexed.	If the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees.	Two per centum on such amount or value: provided that when, after the grant of a certificate under the Succession Certificate Act, VII of 1889.

[1] *See* now the Indian Stamp Act, 1899 (II of 1899), General Acts, Vol. V.

[2] The articles 11, 12 and 12A here printed were substituted for the original articles 11 and 12, by the Succession Certificate Act, 1889 (VII of 1889), s. 13 (1), General Acts, Vol. IV.

SCHEDULE I—*contd.*

Ad valorem fees—contd.

Number.		Proper Fee.
	11. Probate, etc.—*contd.*	1889, or any enactment repealed by that Act, or under the Regulation of the Bombay Code[1] No. VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.
VII of 1889.	[2] 12. Certificate under the Succession Certificate Act, 1889.[3]	In any case Two per centum on the amount or value of any debt or security specified in the certificate under section 3 of the Act, and three per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act. NOTE.—(1) The amount of a debt is its amount, including interest on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained. (2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act; and where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.

[1] Bom. Code.
[2] *See* second foot-note on preceding page.
[3] General Acts, Vol. IV.

SCHEDULE I—*contd.*

Ad valorem fees—contd.

Number.		Proper Fee.	
[1]12A. Certificate under the Regulation of the Bombay Code[2], No. VIII of 1827.	....	(1) As regards debts and securities, the same fee as would be payable in respect of a certificate under the Succession Certificate Act, 1889,[3] or in respect of an extension of such a certificate, as the case may be, and (2) as regards other property in respect of which the certificate is granted, two per centum on so much of the amount or value of such property as exceeds one thousand rupees.	VII of 1889.
[4]13. Application to the Chief Court in the Punjab for the exercise of its jurisdiction under section 70 of the Punjab Courts Act, 1884, as amended by the Punjab Courts Act, 1899[5] [or to the Court of the Financial Commissioner of the Punjab for the exercise of its revisional jurisdiction under section 84 of the Punjab Tenancy Act, 1887].	When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees.	Two rupees.	
	When such amount or value exceeds twenty-five rupees.	The fee leviable on a memorandum of appeal.	XVIII of 1884. XXV of 1899.
[[6]14. Application to the Chief Court of Lower Burma for the exercise of its revisional jurisdiction under section 622 of the [7]Code of Civil Procedure or section 25 of the [8]Provincial Small Causes Courts Act, 1887.]	When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees.	Two rupees.	XIV of 1882.
	When such amount or value exceeds twenty-five rupees.	The fee leviable on a memorandum of appeal.	IX of 1887.

[1] *See* second foot-note on p. 126.

[2] Bom. Code.

[3] General Acts, Vol. IV.

[4] Inserted by the Punjab Courts Act, 1884 (XVIII of 1884), s. 71, as amended by the Punjab Courts Act, 1899 (XXV of 1899), s. 6, P. and N.-W. Code.

Similar fees are payable on the like applications to the Court of the Judicial Commissioner of the N.-W. Frontier Province, *see* s. 85 (1) of the N.-W. Frontier Province Law and Justice Regulation, 1901 (VII of 1901), P. and N. W. Code.

[5] These words were added by s. 1 of Act IX of 1901, General Acts, Vol. V.

[6] Substituted by the Lower Burma Courts Act, 1900 (VI of 1900), s. 47, and Schedule I. Art. 14 was originally inserted by the Lower Burma Courts Act, 1889 (XI of 1889), s. 84.

[7] *See* now the Code of Civil Procedure, 1908 (Act V of 1908), General Acts. Vol. VI.

[8] General Acts, Vol. IV.

SCHEDULE I—*contd.*

Ad valorem fees—contd.

Number.		Proper Fee.
[1 15. *Application to the Court of the Judicial Commissioner, Upper Burma, for the exercise of its revisional jurisdiction under section* 622 *of the* 2 *Code of Civil Procedure or section 25 of the* 3 *Provincial Small Cause Courts Act*, 1887.- 4* * * * *]	When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees.	Two rupees.
XIV of 1882. IX of 1887.	When such amount or value exceeds twenty-five rupees.	The fee leviable on a memorandum of appeal.

Table of rates of ad valorem fees leviable on the institution of suits.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
..	5	0 6 0
5	10	0 12 0
10	15	1 2 0
15	20	1 8 0
20	25	1 14 0
25	30	2 4 0
30	35	2 10 0
35	40	3 0 0
40	45	3 6 0
45	50	3 12 0
50	55	4 2 0
55	60	4 8 0
60	65	4 14 0
65	70	5 4 0

1 This article was inserted after art. 14 in the application to Upper Burma of the first schedule, by the Upper Burma Civil Courts Regulation, 1896 (I of 1896), s. 36, Bur. Code.

2 *See* now Act V of 1908, General Acts, Vol. VI.

3 General Acts, Vol. III.

4 The words and figures "or section 14 of the Upper Burma Civil Courts Regulation, 1896," were repealed by the Upper Burma Civil Courts (Amendment) Regulation, 1902 (V of 1903), s. 4.

SCHEDULE I—*contd.*

Table of rates of ad valorem fees, etc.—contd.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
70	75	5 10 0
75	80	6 0 0
80	85	6 6 0
85	90	6 12 0
90	95	7 2 0
95	100	7 8 0
100	110	8 4 0
110	120	9 0 0
120	130	9 12 0
130	140	10 8 0
140	150	11 4 0
150	160	12 0 0
160	170	12 12 0
170	180	13 8 0
180	190	14 4 0
190	200	15 0 0
200	210	15 12 0
210	220	16 8 0
220	230	17 4 0
230	240	18 0 0
240	250	18 12 0
250	260	19 8 0
260	270	20 4 0
270	280	21 0 0
280	290	21 12 0
290	300	22 8 0
300	310	23 4 0

SCHEDULE I—*contd.*

Table of rates of ad valorem fees, etc.—contd.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
310	320	24 0 0
320	330	24 12 0
330	340	25 8 0
340	350	26 4 0
350	360	27 0 0
360	370	27 12 0
370	380	28 8 0
380	390	29 4 0
390	400	30 0 0
400	410	30 12 0
410	420	31 8 0
420	430	32 4 0
430	440	33 0 0
440	450	33 12 0
450	460	34 8 0
460	470	35 4 0
470	480	36 0 0
480	490	36 12 0
490	500	37 8 0
500	510	38 4 0
510	520	39 0 0
520	530	39 12 0
530	540	40 8 0
540	550	41 4 0
550	560	42 0 0
560	570	42 12 0
570	580	43 8 0

SCHEDULE I—*contd.*

Table of rates of ad valorem fees, etc.—contd.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
580	590	44 4 0
590	600	45 0 0
600	610	45 12 0
610	620	46 8 0
620	630	47 4 0
630	640	48 0 0
640	650	48 12 0
650	660	49 8 0
660	670	50 4 0
670	680	51 0 0
680	690	51 12 0
690	700	52 8 0
700	710	53 4 0
710	720	54 0 0
720	730	54 12 0
730	740	55 8 0
740	750	56 4 0
750	760	57 0 0
760	770	57 12 0
770	780	58 8 0
780	790	59 4 0
790	800	60 0 0
800	810	60 12 0
810	820	61 8 0
820	830	62 4 0
830	840	63 0 0
840	850	63 12 0

SCHEDULE I—*contd.*

Table of rates of ad valorem fees, etc.—contd.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
850	860	64 8 0
860	870	65 4 0
870	880	66 0 0
880	890	66 12 0
890	900	67 8 0
900	910	68 4 0
910	920	69 0 0
920	930	69 12 0
930	940	70 8 0
940	950	71 4 0
950	960	72 0 0
960	970	72 12 0
970	980	73 8 0
980	990	74 4 0
990	1,000	75 0 0
1,000	1,100	80 0 0
1,100	1,200	85 0 0
1,200	1,300	90 0 0
1,300	1,400	95 0 0
1,400	1,500	100 0 0
1,500	1,600	105 0 0
1,600	1,700	110 0 0
1,700	1,800	115 0 0
1,800	1,900	120 0 0
1,900	2,000	125 0 0
2,000	2,100	130 0 0
2,100	2,200	135 0 0

SCHEDULE I—*contd.*

Table of rates of ad valorem fees, etc.—contd.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
2,200	2,300	140 0 0
2,300	2,400	145 0 0
2,400	2,500	150 0 0
2,500	2,600	155 0 0
2,600	2,700	160 0 0
2,700	2,800	165 0 0
2,800	2,900	170 0 0
2,900	3,000	175 0 0
3,000	3,100	180 0 0
3,100	3,200	185 0 0
3,200	3,300	190 0 0
3,300	3,400	195 0 0
3,400	3,500	200 0 0
3,500	3,600	205 0 0
3,600	3,700	210 0 0
3,700	3,800	215 0 0
3,800	3,900	220 0 0
3,900	4,000	225 0 0
4,000	4,100	230 0 0
4,100	4,200	235 0 0
4,200	4,300	240 0 0
4,300	4,400	245 0 0
4,400	4,500	250 0 0
4,500	4,600	255 0 0
4,600	4,700	260 0 0
4,700	4,800	265 0 0
4,800	4,900	270 0 0

SCHEDULE I—*contd.*

Table of rates of ad valorem fees, etc.—contd.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
4,900	5,000	275 0 0
5,000	5,250	285 0 0
5,250	5,500	295 0 0
5,500	5,750	305 0 0
5,750	6,000	315 0 0
6,000	6,250	325 0 0
6,250	6,500	335 0 0
6,500	6,750	345 0 0
6,750	7,000	355 0 0
7,000	7,250	365 0 0
7,250	7,500	375 0 0
7,500	7,750	385 0 0
7,750	8,000	395 0 0
8,000	8,250	405 0 0
8,250	8,500	415 0 0
8,500	8,750	425 0 0
8,750	9,000	435 0 0
9,000	9,250	445 0 0
9,250	9,500	455 0 0
9,500	9,750	465 0 0
9,750	10,000	475 0 0
10,000	10,500	490 0 0
10,500	11,000	505 0 0
11,000	11,500	520 0 0
11,500	12,000	535 0 0
12,000	12,500	550 0 0

SCHEDULE I—*contd.*

Table of rates of ad valorem fees, etc.—contd.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
12,500	13,000	565 0 0
13,000	13,500	580 0 0
13,500	14,000	595 0 0
14,000	14,500	610 0 0
14,500	15,000	625 0 0
15,000	15,500	640 0 0
15,500	16,000	655 0 0
16,000	16,500	670 0 0
16,500	17,000	685 0 0
17,000	17,500	700 0 0
17,500	18,000	715 0 0
18,000	18,500	730 0 0
18,500	19,000	745 0 0
19,000	19,500	760 0 0
19,500	20,000	775 0 0
20,000	21,000	795 0 0
21,000	22,000	815 0 0
22,000	23,000	835 0 0
23,000	24,000	855 0 0
24,000	25,000	875 0 0
25,000	26,000	895 0 0
26,000	27,000	915 0 0
27,000	28,000	935 0 0
28,000	29,000	955 0 0
29,000	30,000	975 0 0
30,000	32,000	995 0 0
32,000	34,000	1,015 0 0

SCHEDULE I—*contd.*

Table of rates of ad valorem fees, etc.—contd.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
34,000	36,000	1,035 0 0
36,000	38,000	1,055 0 0
38,000	40,000	1,075 0 0
40,000	42,000	1,095 0 0
42,000	44,000	1,115 0 0
44,000	46,000	1,135 0 0
46,000	48,000	1,155 0 0
48,000	50,000	1,175 0 0
50,000	55,000	1,200 0 0
55,000	60,000	1,225 0 0
60,000	65,000	1,250 0 0
65,000	70,000	1,275 0 0
70,000	75,000	1,300 0 0
75,000	80,000	1,325 0 0
80,000	85,000	1,350 0 0
85,000	90,000	1,375 0 0
90,000	95,000	1,400 0 0
95,000	1,00,000	1,425 0 0
1,00,000	1,05,000	1,450 0 0
1,05,000	1,10,000	1,475 0 0
1,10,000	1,15,000	1,500 0 0
1,15,000	1,20,000	1,525 0 0
1,20,000	1,25,000	1,550 0 0
1,25,000	1,30,000	1,575 0 0
1,30,000	1,35,000	1,600 0 0
1,35,000	1,40,000	1,625 0 0
1,40,000	1,45,000	1,650 0 0

SCHEDULE I—*contd.*

Table of rates of ad valorem fees, etc.—contd.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
1,45,000	1,50,000	1,675 0 0
1,50,000	1,55,000	1,700 0 0
1,55,000	1,60,000	1,725 0 0
1,60,000	1,65,000	1,750 0 0
1,65,000	1,70,000	1,775 0 0
1,70,000	1,75,000	1,800 0 0
1,75,000	1,80,000	1,825 0 0
1,80,000	1,85,000	1,850 0 0
1,85,000	1,90,000	1,875 0 0
1,90,000	1,95,000	1,900 0 0
1,95,000	2,00,000	1,925 0 0
2,00,000	2,05,000	1,950 0 0
2,05,000	2,10,000	1,975 0 0
2,10,000	2,15,000	2,000 0 0
2,15,000	2,20,000	2,025 0 0
2,20,000	2,25,000	2,050 0 0
2,25,000	2,30,000	2,075 0 0
2,30,000	2,35,000	2,100 0 0
2,35,000	2,40,000	2,125 0 0
2,40,000	2,45,000	2,150 0 0
2,45,000	2,50,000	2,175 0 0
2,50,000	2,55,000	2,200 0 0
2 55,000	2,60,000	2,225 0 0
2,60,000	2,65,000	2,250 0 0
2,65,000	2,70,000	2,275 0 0
2,70,000	2,75,000	2,300 0 0
2,75,000	2,80,000	2,325 0 0

SCHEDULE I—*concld.*

Table of rates of ad valorem fees, etc.—concld.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
2,80,000	2,85,000	2,350 0 0
2,85,000	2,90,000	2,375 0 0
2,90,000	2,95,000	2,400 0 0
2,95,000	3,00,000	2,425 0 0
3,00,000	3,05,000	2,450 0 0
3,05,000	3,10,000	2,475 0 0
3,10,000	3,15,000	2,500 0 0
3,15,000	3,20,000	2,525 0 0
3,20,000	3,25,000	2,550 0 0
3,25,000	3,30,000	2,575 0 0
3,30,000	3,35,000	2,600 0 0
3,35,000	3,40,000	2,625 0 0
3,40,000	3,45,000	2,650 0 0
3,45,000	3,50,000	2,675 0 0
3,50,000	3,55,000	2,700 0 0
3,55,000	3,60,000	2,725 0 0
3,60,000	3,65,000	2,750 0 0
3,65,000	3,70,000	2,775 0 0
3,70,000	3,75,000	2,800 0 0
3,75,000	3,80,000	2,825 0 0
3,80,000	3,85,000	2,850 0 0
3,85,000	3,90,000	2,875 0 0
3,90,000	3,95,000	2,900 0 0
3,95,000	4,00,000	2,925 0 0
4,00,000	4,05,000	2,950 0 0
4,05,000	4,10,000	2,975 0 0
4,10,000	..	3,000 0 0

SCHEDULE II.

Fixed Fees.

Number.		Proper Fee.
1. Application or petition	(*a*).—When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings; or when presented to any officer of land-revenue by any person holding temporarily settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement; or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement; or when presented to any Civil Court other than a principal Civil Court of original jurisdiction, [1] * * * * * or to any Court of Small Causes constituted under Act[2] No. XI of 1865 or under Act[3] No. XVI of 1868, section 20, or to a Collector or other officer of revenue in relation to any suit or case in which the	One anna.

[1] The words "or to any Cantonment Magistrate sitting as a Court of Civil Judicature under Act No. III of 1859" were repealed by the Cantonments Act, 1889 (XIII of 1889), General Acts, Vol. IV.

[2] *See* now the Provincial Small Causes Courts Act, 1887 (IX of 1887), General Acts, Vol. IV, by which Act XI of 1865 was repealed.

[3] *See* now s. 25 of the Bengal, North-Western Provinces and Assam Civil Courts Act, 1887 (XII of 1887), Ben. Code; U. P. Code; E. B. and A. Code.

SCHEDULE II—*contd.*

Fixed Fees—contd.

Number.		Proper Fee.
1. Application or petition —*contd.*	amount or value of the subject-matter is less than fifty rupees: or when presented to any Civil, Criminal or Revenue Court, or to any Board or executive officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, Board or officer, or of any other document on record in such Court or Office.	One anna.
	(*b*).—When containing a complaint or charge of any offence other than an offence for which police-officers may, under the Criminal Procedure Code,[1] arrest without warrant, and presented to any Criminal Court: or when presented to a Civil, Criminal or Revenue Court, or to a Collector, or any Revenue-officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity and not otherwise provided for by this Act: or to deposit in Court revenue or rent; or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant.	Eight annas.
	(*c*).—When presented to a Chief Commissioner or other Chief Controlling Revenue or Executive Authority, or to a Commissioner of Revenue or Circuit, or to any chief officer	One rupee.

[1] See now the Code of Criminal Procedure, 1898 (Act V of 1898), General Acts, Vol. V.

SCHEDULE II—*contd.*

Fixed Fees—contd.

Number.		Proper Fee.	
1.—Application or petition —*concld.*	charged with the executive administration of a Division and not otherwise provided for by this Act.		
	(*d*).—When presented to a High Court.	Two rupees.	
2. Application for leave to sue as a pauper.	.. ..	Eight annas.	
3. Application for leave to appeal as a pauper.	(*a*).—When presented to a District Court.	One rupee.	
	(*b*).—When presented to a Commissioner or a High Court.	Two rupees.	
4. Plaint or memorandum of appeal in a suit to obtain possession under Act [1] No. XVI of 1838, or [2] [the [3] Mamlatdars' Courts Act, 1876].			Bom. III of 1876.
5. Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy.			
[4]6. Bail-bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the [5] Code of Criminal Procedure, 1882, or the [6] Code of Civil Procedure.	..	Eight annas.	
7. Undertaking under section 49 of the [7] Indian Divorce Act.			X of 1882. XIV of 1882. IV of 1869.
8. [*Rep. by the Repealing and Amending Act*, 1891 (*XII of* 1891).]			
9. [*Repealed by Act XII of* 1891.]			
10. Mukhtárnáma or Wakálatnáma.	When presented for the conduct of any one case—		
	(*a*).—to any Civil or Criminal Court other than a High Court, or to any	Eight annas.	

[1] Bom. Code, Vol. I.

[2] These words were substituted for the words "Bombay Act V of 1864" (*to give Mamlatdars' Courts jurisdiction in certain cases to maintain existing possession, or to restore possession to any party dispossessed otherwise than by course of law*), by the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol. IV.

[3] *See* now the Bombay Mamlatdars' Courts Act, 1906 (Bom. Act II of 1906), Bom. Code.

[4] This article was substituted for the original article 6, by the Probate and Administration Act, 1889 (VI of 1889), s. 18 (2), General Acts, Vol. IV. The original article ran as follows :—"Bail-bond or other instrument of obligation not otherwise provided for by this Act, when given by the direction of any Court or executive authority."

[5] *See* now the Code of Criminal Procedure, 1898 (Act V of 1898), General Acts, Vol. V.

[6] *See* now Act V of 1908, General Acts, Vol. VI.

[7] *Supra.*

SCHEDULE II—*contd.*

Fixed Fees—contd.

Number.		Proper Fee.
10.—Mukhtárnáma or Wakálatnáma—*concld.*	Revenue Court, or to any Collector or Magistrate, or other executive officer, except such as are mentioned in clauses (*b*) and (*c*) of this number,	
	(*b*)—to a Commissioner of Revenue, Circuit or Customs or to any officer charged with the executive administration of a Division, not being the Chief Revenue or Executive Authority,	One rupee.
	(*c*)—to a High Court, Chief Commissioner, Board of Revenue, or other Chief Controlling Revenue or Executive Authority.	Two rupees.
11. Memorandum of appeal when the appeal is not [1] * * * * * * from a decree or an order having the force of a decree, and is presented—	(*a*)—to any Civil Court other than a High Court, or to any Revenue Court or Executive Officer other than the High Court or Chief Controlling Revenue or Executive Authority,	Eight annas.
	(*b*)—to a High Court or Chief Commissioner, or other Chief Controlling Executive or Revenue Authority.	Two rupees.
12. Caveat. 13. Application under Act [2] No. X of 1859, section 26, or [3] Bengal Act No. VI of 1862, section 9, or [4] Bengal Act No. VIII of 1869, section 37.	....	Five rupees.

[1] The words "from an order rejecting a plaint or" were omitted by s. 155 (Sch. 4) of the Code of Civil Procedure (Act V of 1908), General Acts, Vol. VI.

[2] Act X of 1859 was repealed by the Bengal Tenancy Act, 1885 (VIII of 1885), Ben. Code, in those portions of the Lower Provinces to which that Act extends and in the Chota Nagpur Division (except Manbhum and the Tributary Mahals) by the Chota Nagpur Landlord and Tenant Procedure Act, 1879 (Ben. Act I of 1879), Ben. Code; in the Province of Agra by Act XVIII of 1873; and in the Central Provinces, by the Central Provinces Tenancy Act, 1883 (IX of 1883), C. P. Code.

[3] Bengal Act VI of 1862 was repealed by the Bengal Tenancy Act, 1885 (VIII of 1885), so far as it affected those portions of the Lower Provinces to which that Act extends; and in the Chota Nagpur Division (except Manbhum and the Tributary Mahals) by the Chota Nagpur Landlord and Tenant Procedure Act, 1879 (I of 1879), Ben. Code.

[4] Bengal Act VIII of 1869 was repealed by the Bengal Tenancy Act, 1885 (VIII of 1885).

SCHEDULE II—*concld.*

Fixed Fees—concld.

Number.		Proper Fee.	
14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866.[1]	....	Five rupees.	XXI of 1866
15. [*Rep. Act V of 1908.*]			
16. [*Repealed by Act VI of 1889, s. 18 (1).*]			
17. Plaint or memorandum of appeal in each of the following suits :—			
i. to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court :			
ii. to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates :			
iii. to obtain a declaratory decree where no consequential relief is prayed :			
iv. to set aside an award :			
v. to set aside an adoption :	....	Ten rupees.	
vi. every other suit where it is not possible to estimate at a money-value the subject-matter in dispute, and which is not otherwise provided for by this Act.			
18. Application under section 326 of the Code of Civil Procedure.[2]			
[3][19. Agreement in writing stating a question for the opinion of the Court under the Code of [4]Civil Procedure, 1908.]			V of 1908.
20. Every petition under the [5]Indian Divorce Act, except petitions under section 44 of the same Act, and every memorandum of appeal under section 55 of the same Act.	....	Twenty rupees.	IV of 1869.
21. Plaint or memorandum of appeal under the [1]Parsi Marriage and Divorce Act, 1865.			XV of 1865.

[1] General Acts, Vol. I.

[2] *See* now the Code of Civil Procedure, 1908 (Act V of 1908), second schedule, General Acts, Vol. VI.

[3] Substituted by s. 155 (4th Sch.) of the Code of Civil Procedure (Act V of 1908) for the original entry which was as follows :—"Agreement under section 328 of the same Code."

[4] General Acts, Vol. VI.

[5] *Supra.*

SCHEDULE III.[1]

(See section 19 I.)

FORM OF VALUATION (TO BE USED WITH SUCH MODIFICATIONS, IF ANY, AS MAY BE NECESSARY.)

IN THE COURT OF

Re Probate of the Will of *(or administration of the property and credits of* ,) *deceased.*

I { solemnly affirm / make oath }

and say that I am the executor (or one of the executors or one of the next of kin) of , deceased, and that I have truly set forth in Annexure A to this affidavit all the property and credits of which the abovenamed deceased died possessed or was entitled to at the time of his death, and which have come or are likely to come, to my hands.

2. I further say that I have also truly set forth in Annexure B all the items I am by law allowed to deduct.

3. I further say that the said assets, exclusive only of such last-mentioned items, but inclusive of all rents, interest, dividends and increased values since the date of the death of the said deceased, are under the value of

ANNEXURE A.	Rs.	A.	P.
VALUATION OF THE MOVEABLE AND IMMOVEABLE PROPERTY OF , DECEASED.			
Cash in the house and at the banks, household goods, wearing-apparel, books, plate, jewels, etc. (*State estimated value according to best of Executor's or Administrator's belief.*)			
Property in Government securities transferable at the Public Debt Office. (*State description and value at the price of the day; also the interest separately, calculating it to the time of making the application.*)			
Immoveable property consisting of (*State description, giving, in the case of houses, the assessed value, if any, and the number of years' assessment the market-value is estimated at, and, in the case of land, the area, the market-value and all rents that have accrued.*)			
Leasehold property . . . . . (*If the deceased held any leases for years determinable, state the number of years' purchase the profit rents are estimated to be worth and the value of such, inserting separately arrears due at the date of death and all rents received or due since that date to the time of making the application.*)			

[1] This schedule was inserted by the Court-fees Amendment Act, 1899 (XI of 1899), s. 3, General Acts, Vol. V. The original Schedule III was repealed by Act XIV of 1870.

	Rs.	A.	P.
Property in public companies			
(*State the particulars and the value calculated at the price of the day; also the interest separately, calculating it to the time of making the application.*)			
Policy of insurance upon life, money out on mortgage and other securities, such as bonds, mortgages, bills, notes and other securities for money.			
(*State the amount of the whole; also the interest separately, calculating it to the time of making the application.*)			
Book debts			
(*Other than bad*)			
Stock in trade			
(*State the estimated value, if any*)			
Other property not comprised under the foregoing heads (*State the estimated value, if any.*)			
TOTAL .			
Deduct amount shown in Annexure B not subject to duty			
NET TOTAL .			

ANNEXURE B.

SCHEDULE OF DEBTS, ETC.

	Rs.	A.	P.
Amount of debts due and owing from the deceased, payable by law out of the estate.			
Amount of funeral expenses			
Amount of mortgage incumbrances			
Property held in trust not beneficially or with general power to confer a beneficial interest.			
Other property not subject to duty			
TOTAL .			

ACT No. VIII OF 1870.[1]

[*18th March 1870.*]

An Act for the Prevention of the murder of Female Infants.

Preamble.

WHEREAS the murder of female infants is believed to be commonly committed in certain parts of British India; and whereas it is necessary to make better provision for the prevention of the said offence; It is hereby enacted as follows:—

Power to take measures under Act in particular districts.

1. If it shall appear to the Local Government that the said offence is commonly committed in any district, or by any class, or family, or persons residing therein, the Local Government may, with the previous sanction of the Governor General of India in Council, declare by notification published in the official Gazette, and in such other manner as the Local Government shall direct, that measures for the prevention of such offence shall be taken under this Act, in such district, or in respect of such class, or family or persons.[2]

The notification shall define the limits of such district, or shall specify the class, or family or persons to whom such notification is to be deemed to apply.

Power to make rules.

[3] **2.** When such notification shall have been published as aforesaid, it shall be lawful for the Local Government, subject to the provisions of section 3, from time to time to make rules consistent with this Act for all or any of the following purposes:—

(1) for making and maintaining registers of births, marriages and deaths occurring in such district, or in or among the

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[1] Short title, The Female Infanticide Prevention Act, 1870. *See* the Indian Short Titles Act, 1897 (XIV of 1897), General Acts, Vol. IV.

For the Statement of Objects and Reasons, *see* Gazette of India, 1870, Pt. V, p. 15; for Proceedings in Council, *see ibid*, Supplement, pp. 53, 131 and 473.

This Act has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, *infra*, to be in force in the following Scheduled Districts, namely :—

the Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum, *see* Gazette of India, 1881, Pt. I, p. 504. The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894; the district of Lohárdaga is now called the Ranchi district, *see* Calcutta Gazette, 1899, Pt. I, p. 44.

The Act has also been declared in force in the Arakan Hill District by the Arakan Hill District Laws Regulation, 1874 (IX of 1874), Bur. Code.

As to the operation of the Act in the Bombay Presidency, *see* note to s. 7, *infra*.

[2] For notification issued under this power in respect of certain classes of persons in the Ahmedabad and Kaira Districts of the Bombay Presidency, *see* Bom. R. & O.

For notification issued under this power in respect of various localities in the Province of Agra, *see* list on pp. 36 to 39 of the North-Western Provinces List of Local Rules and Orders, Ed. 1894.

[3] For rules made under the section for the United Provinces of Agra and Oudh, *see* the list on p. 39 of the North-Western Provinces List of Local Rules and Orders, Ed. 1894.

For rules made under this section by the Government of the Punjab in respect of all Jats resident in certain villages of the Jullunder District, *see* Gazette of India, 1901, Pt. I, p. 295.

class, family or persons to whom such notification has been made applicable; and for making, from time to time, a census of such persons, or of any other persons residing within such district:[1]

(2) for the entertainment of any police-force in excess of the ordinary fixed establishment of police, or for the entertainment of any officers or servants, for the purpose of preventing or detecting the murder of female infants in such district, or in or among such class, family or persons, or for carrying out any of the provisions of this Act:

(3) for prescribing how and by whom information shall be given to the proper officers of all births, marriages and deaths occurring or about to occur in such district, or in or among such class, family or persons:

(4) for the regulation and limitation of expenses[2] incurred by any person to whom such notification applies on account of the celebration of marriage or of any ceremony or custom connected therewith:

(5) for regulating the manner in which all or any of the expenses incurred in carrying into effect rules made under this section shall be recovered from all or any of the inhabitants of such district, or from the persons to whom such notification is applicable:[3]

(6) for defining the duties of any officer or servant appointed to carry out any rule made under this section.

Confirmation and publication of rules.

3. No rule or alteration made under section 2 shall take effect until it shall have been confirmed by the Governor General of India in Council and published in the Gazette of India and also in the local Gazette.

Copies of every such rule shall be affixed in such places, and shall be distributed in such manner, as the Local Government may direct.

Punishment for breach of rules.

4. Whoever disobeys any such rule shall, on conviction before any officer exercising the powers of a Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Saving of prosecutions under other laws.

5. Nothing in this Act, or in any rule made and published as aforesaid, shall prevent any person from being prosecuted and punished under any other law for any offence punishable under this Act: Provided that no person shall be punished twice for the same offence.

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[1] For rules made by the Government of Bombay in respect of the classes referred to in the notification quoted in the second note on the preceding page, *see* Bom. R. & O.

[2] For rules limiting marriage expenses among the classes referred to *supra*, *see ibid.*

[3] As to the application of funds collected under the Act or the rules made thereunder for the educational benefit of those classes in the Ahmedabad District to whom the Act has been applied, *see* s. 1 of Bombay Act III of 1897 (*to amend Act VIII of 1870*), Bom. Code.

Power to place neglected children under supervision.

6. If it appears to the Magistrate of the District that any person, to whom the notification mentioned in section 1 applies, neglects to make proper provision for the maintenance of any female child for whose maintenance he is legally responsible, and that the life or health of such child is thereby endangered, such Magistrate may, in his discretion, place the child under such supervision as he may think proper, and shall, if necessary, remove the child from the custody of such person.

The Magistrate of the District may order him to make a monthly allowance for the maintenance of the child at such monthly rate not exceeding fifty rupees as to such Magistrate shall seem reasonable, and, if such person wilfully neglects to comply with such order, such Magistrate may, for every breach of the order, by warrant direct the amount due to be levied in manner provided by section 61 [1] of the Code of Criminal Procedure.

Nothing in this section shall affect the powers of a Magistrate under section 316 [2] of the same Code.

Extent of Act.

7. This Act shall, in the first instance, extend only to the North-Western Provinces, to the Punjab and to Oudh; but the Governor General of India in Council may by order extend it to any part of the territories (other than Oudh) under the immediate administration of the Government of India; and the Governor of Madras in Council, the Governor of Bombay in Council [3] and the Lieutenant-Governor of Bengal may severally by order extend it to any part of the territories under their respective Governments.

Every order under this section made by the Governor General of India in Council shall be published in the Gazette of India. Every other order made under this section shall be published in the local official Gazette.

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[1] *See* now Act V of 1898, ss. 386 and 387, General Acts, Vol. V.

[2] *See* now Act V of 1898, s. 488, *ibid.*

[3] The Act has been declared to extend and to have extended from the 21st December 1870, to the Presidency of Bombay, by s. 2 of Bombay Act III of 1897 (*to amend Act VIII of 1870*), Bom. Code.

ACT No. XX OF 1870.[1]

[*5th July, 1870.*]

An Act to correct two clerical errors in the Court-fees Act, 1870.

Preamble.

FOR the purpose of correcting two clerical errors in the Court-fees Act, 1870 ;[2] It is hereby enacted as follows:— VII of 1870.

Corrections of Act VII of 1870, section 15 and Schedule I, No. 2.

1. Section 15 of the said Act shall be read as if, for the words "plaint or memorandum of appeal," the word "application" were substituted; and in Schedule I to the said Act annexed, No. 2 shall be read as if the words "or memorandum of appeal" were omitted therefrom.

ACT No. XXI OF 1870.[3]

[*19th July, 1870.*]

An Act to regulate the Wills of Hindus, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal and the towns of Madras and Bombay.

Preamble.

WHEREAS it is expedient to provide rules for the execution, attesta-

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[1] Short title, The Court-fees Act Amendment Act, 1870. *See* the Indian Short Titles Act, 1897 (XIV of 1897), General Acts, Vol. IV.

For the Statement of Objects and Reasons, *see* Gazette of India, 1870, Pt. V, p. 166; for Proceedings in Council, *see ibid*, Supplement, pp. 902 and 912.

This Act as amending Act VII of 1870 has been declared in force in Upper Burma generally (except the Shan States), *see* s. 4 (1) and the First Schedule to the Burma Laws Act, 1898 (XIII of 1898), Bur. Code.

It is included in the Schedule to the Santhál Parganas Settlement Regulation (III of 1872), as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (III of 1899), Ben. Code.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, *infra*, to be in force in the following Scheduled Districts, namely :—

the District of Hazáribágh .	*See* Gazette of India,	1881, Pt. I, p. 507.
the District of Lohárdaga .	Ditto	1881, Pt. I, p. 508.
the Pargana of Dhálbhum in the District of Singbhum .	Ditto	1881, Pt. I, p. 570.

[The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894; the District of Lohárdaga is now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44.]

the North-Western Provinces Tarái . . . . . *See* Gazette of India, 1876, Pt. I, p. 505.

As to its extension as part of Act VII of 1870, *see* footnote on p. 102, *supra*.

[2] Printed *supra*.

[3] For the Statement of Objects and Reasons, *see* Gazette of India, 1869, Pt. V, p. 32; for the first Report of the Select Committee, which was ordered to be published by the Council, *see ibid*, 1870, Pt. V, p. 11; for Proceedings in Council, *see ibid*, 1869, Supplement, p. 1499; Supplement, 1870, p. 76, Extra Supplement, p. 34, and Supplement, p. 957.

This Act has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, *infra*, to be in force in the following Scheduled Districts, namely :—

The Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singhbum—*see* Gazette of India, 1881, Pt. I, p. 504.

[As regards the District of Lohárdaga *see* first note *supra*].

It is included in the Schedule to the Santhál Parganas Settlement Regulation (III of 1872), as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (III of 1899), Ben. Code.

tion, revocation, revival, interpretation and probate of the wills of Hindus, Jainas, Sikhs and Buddhists in the territories subject to the Lieutenant-Governor of Bengal and in the towns of Madras and Bombay; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Hindu Wills Act, 1870.

X of 1865.

Certain portions of Act X of 1865 extended to wills of Hindus, Jainas, Sikhs and Buddhists.

2. The following portions of the Indian Succession Act, 1865,[1] namely,—

sections 46, 48, 49, 50, 51, 55 and 57 to 77 (both inclusive),
sections 82, 83, 85, 88 to 103 (both inclusive),
sections 106 to 177 (both inclusive), [2] [and section 187,]

shall, notwithstanding anything contained in section 331 of the said Act, apply—

Extent of Act.

(*a*) to all wills and codicils made by any Hindu, Jaina, Sikh or Buddhist, on or after the first day of September, 1870, within the said territories or the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay, and

(*b*) to all such wills and codicils made outside those territories and limits, so far as relates to immoveable property situated within those territories or limits:

Provisos.

3. Provided that marriage shall not revoke any such will or codicil:

And that nothing herein contained shall authorize a testator to bequeath property which he could not have alienated *inter vivos*, or to deprive any persons of any right of maintenance of which, but for section 2 of this Act, he could not deprive them by will: * * * *[3]

And that nothing herein contained shall affect any law of adoption or intestate succession:

And that nothing herein contained shall authorize any Hindu, Jaina, Sikh or Buddhist to create in property any interest which he could not have created before the first day of September, 1870.

Partial repeal of Bengal Regulation V of 1799, section 2.

4. On and from that day, section 2 of Bengal Regulation V of 1799 [4] shall be repealed so far as relates to the executors of persons who are not Muhammadans, but are subject to the jurisdiction of a District Court in the territories subject to the Lieutenant-Governor of Bengal.

Saving of

5. Nothing contained in this Act shall affect the rights, duties and

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[1] General Acts, Vol. I.

[2] The words and figures "and *section 187*" were substituted for the portion of section 2 commencing with the words and figures "section 179" and ending with the words "administrator with the will annexed" by section 154 (*a*) of the Probate and Administration Act, 1881 (V of 1881), General Acts, Vol. III.

[3] The third clause [which was as follows, "And that nothing herein contained shall vest in the executor or administrator with the will annexed of a deceased person any property which such person could not have alienated *inter vivos*":] was repealed by s. 154 (*b*) of the Probate and Administration Act, 1881 (V of 1881), General Acts, Vol. III.

[4] Ben. Code.

rights of Administrator General.

privileges of the Administrators General of Bengal, Madras and Bombay, respectively.[1]

Interpretation-clause.

6. In this Act and in the said sections * * [2] of the Indian Succession Act,[3] all words defined in section 3 of the same Act shall, unless there be something repugnant in the subject or context, be deemed to have the same meaning as the said section 3 has attached to such words respectively: X of 1865.

And in applying sections 62, 63, 92, 96, 98, 99, 100, 101, 102, [4] [and 103] of the said Succession Act, to wills and codicils made under this Act, the words "son," "sons," "child" and "children" shall be deemed to include an adopted child; and the word "grand-children" shall be deemed to include the children, whether adopted or natural-born, of a child whether adopted or natural-born; and the expression "daughter-in-law" shall be deemed to include the wife of an adopted son.[5]

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[1] *See* the Administrator General's Act, 1874 (II of 1874), printed, *infra*.

[2] The words "and Parts" were repealed by the Repealing and Amending Act, 1891 (XII of 1891).

[3] General Acts, Vol. I.

[4] The words and figures "and 103" were substituted for the words and figures "103 and 182" by s. 154 (*c*) of the Probate and Administration Act, 1881 (V of 1881), General Acts, Vol. III.

[5] The last clause of section 6, as to the making of grants of letters of administration, was repealed by s. 154 (*b*) of the Probate and Administration Act, 1881 (V of 1881).

ACT No. XXVII OF 1870.[1]

[*25th November 1870.*]

An Act to amend the Indian Penal Code.[2]

XLV of 1860.

FOR the purpose of amending the Indian Penal Code; It is hereby enacted as follows:— Preamble.

Section 34.

1. For section 34 of the said Code, the following section shall be substituted:—

Liability for act done by several persons in furtherance of common intention.

"34. When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."

Section 40.

2. For section 40 of the said Code the following section shall be substituted:—

"Offence."

"40. Except in the chapter and sections mentioned in clauses 2 and 3 of this section, the word 'offence' denotes a thing made punishable by this Code.

"In Chapter IV and in the following sections, namely, sections 64,[3] 65,[3] 66,[3] 67,[4] 71,[3] 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203,

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[1] Short title, The Indian Penal Code Amendment Act, 1870. *See* the Indian Short Titles Act, 1897 (XIV of 1897), General Acts, Vol. IV.

For the Statement of Objects and Reasons, *see* Gazette of India, 1870, Pt. V, p. 279; for Proceedings in Council, *see ibid*, Supplement, pp. 1018, 1076, 1200 and 1311.

This Act, as amending Act XLV of 1860, has been declared in force in Upper Burma generally (except the Shan States), *see* s. 4 (1) and the First Schedule to the Burma Laws Act, 1898 (XIII of 1898), Bur. Code.

It has been declared in force in the Santhál Parganas—*see* Schedule to the Santhál Parganas Settlement Regulation (III of 1872) as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (III of 1899), Ben. Code; the Arakan Hill District—*see* the Arakan Hill District Laws Regulation, 1874 (IX of 1874), s. 3, Bur. Code.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), printed *infra*, to be in force in the following Scheduled Districts, namely:—

The Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum. [The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894; the District of Lohárdaga is now called the Ranchi District, *see* Cal. Gazette 1899, Pt. I, p. 44]	*See* Gazette of India,	1881, Pt. I, p. 504.
The North-Western Provinces Tarái	Ditto	1876, Pt. I, p. 505.

[2] General Acts, Vol. I.

[3] These figures were inserted in the second clause of section 40 of the Indian Penal Code by the Indian Penal Code Amendment Act, 1882 (VIII of 1882), s. 1, printed, General Acts, Vol. III.

[4] This figure was inserted in the second clause of section 40 of the Indian Penal Code by the Indian Criminal Law Amendment Act, 1886 (X of 1886), s. 21 (*1*), printed, General Act, Vol. III.

211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word 'offence' denotes a thing punishable under this Code, or under any special or local law as hereinafter defined:

"And in sections 141, 176, 177, 201, 202, 212, 216 and 441, the word 'offence' has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine."

Section 56.

3. Section 56 of the said Code shall be read as if the following proviso were added thereto:—

Proviso as to sentence for term exceeding ten years but not for life.

"Provided that, where a European or American offender would, but for such Act, be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life, he shall be liable to be sentenced or ordered to be kept in penal servitude for such term exceeding six years as to the Court seems fit, but not for life."

4. After section 121 of the said Code the following section shall be inserted:—

Conspiracy to commit offences punishable by section 121.

"121A. Whoever within or without British India conspires to commit any of the offences punishable by section 121 or to deprive the Queen of the Sovereignty of British India or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local Government, shall be punished with transportation for life or any shorter term, or with imprisonment of either description which may extend to ten years.

"*Explanation.*—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof."

5. [*Rep. by the Repealing and Amending Act, 1903 (I of 1903).*]

Addition to section 131.

6. Section 131 of the said Code shall be read as if the following Explanation were added thereto:

"*Explanation.*—In this section the words 'officer' and 'soldier' include any person subject to the Articles of War for the better government of Her Majesty's Army, or to the Articles of War [1] contained in Act No. V of 1869."[2].

7. *Sections 194 and 195.* [*Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*]

Sections 222 and 223.

8. Sections 222 and 223 of the said Code shall be construed as if, after the word "offence," the following words were inserted (that is to say), "or lawfully committed to custody";

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[1] For power to Her Majesty to make Articles of War, *see* s. 69 of the Army Act (44 & 45 Vict., c. 58), Coll. Stat., Vol. II.

[2] Printed, *supra.*

and section 222 of the said Code shall be construed as if the following words were added thereto (that is to say), "or if the person was lawfully committed to custody."

9. *Section 225A.* [*Rep. by the Repealing and Amending Act, 1891, (XII of 1891).*]

10. After section 294, and before Chapter XV of the Indian Penal Code, the following section shall be inserted :— XLV of 1860.

Keeping lottery-office.

"294A. Whoever keeps any office or place for the purpose of drawing any lottery not authorized by Government shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

"And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees."

11. Section 307 of the said Code shall be read as if the following clause were added thereto :—

Attempts by life-convicts.

"When any person offending under this section is under sentence of transportation for life, he may, if hurt is caused, be punished with death."

12. After section 304 of the same Code, the following section shall be inserted :—

Causing death by negligence.

"304A. Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

13. The following chapters of the same Code, namely, IV (*General Exceptions*), V (*Of Abetment*) and XXIII (*Of Attempts to commit Offences*) shall apply to offences punishable under the said sections 121A, 294A and 304A, and the said Chapters IV and V shall apply to offences punishable under [1] [sections 124A and 225A and 225B].

Application of certain chapters of Penal Code.

14. *Order of Local Government necessary to prosecution under section 121A, 124A or 294A.* [*Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*]

15. Nothing contained in this Act shall be taken to affect any of the provisions of any special or local law.

Saving of special and local laws.

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[1] The words and figures "section 124A and 225A and 225B" were substituted for the words and figures "said sections 124A and 225A" by the second schedule to the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol. IV.

16. *Addition to Code of Criminal Procedure.* [*Rep. by Act X of 1872.*]

17. *Repeal of enactments.* [*Rep. by Act X of 1872.*]

SCHEDULE I.

ADDITION TO SCHEDULE TO CODE OF CRIMINAL PROCEDURE.

[*Repealed by Act X of 1872.*]

SCHEDULE II.

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[*Repealed by Act X of 1872.*]

THE CATTLE-TRESPASS ACT, 1871.

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SCHEDULE.

ACT No. I OF 1871.[1]

[*13th January 1871.*]

An Act to consolidate and amend the law relating to Trespasses by Cattle.

WHEREAS it is expedient to consolidate and amend the law relating to trespasses by cattle; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

[2]**1.** (*1*) This Act may be called the Cattle-trespass Act, 1871; and Title and extent.

(*2*) It extends to the whole of British India,[3] except the presidency-towns and such local areas as the Local Government, by notification in the official Gazette, may from time to time exclude from its operation.[4]

(*3*) The Local Government may at any time, by notification in the official Gazette, cancel or vary a notification under sub-section (*2*).

2. The Acts mentioned in the schedule hereto annexed are repealed. Repeal of Acts.

References to any of the said Acts in Acts passed subsequently thereto shall be read as if made to this Act. References to repealed Acts.

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[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1870, Pt. V, p. 310; for Proceedings in Council, *see ibid*, Supplement, pp. 1150, 1200, 1290, and Supplement, 1871, p. 178.

[2] This section was substituted for the original s. 1 by the Cattle-trespass Act Amendment Act, 1891 (I of 1891), s. 1, General Acts, Vol. IV.

[3] This Act has been declared in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (1), and Sch. I, Bur Code; in the Hill District of Arakan by the Arakan Hill District Laws Regulation, 1874 (IX of 1874), s. 3, *ibid*; in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890), s. 3, Bal. Code; in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872), as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (III of 1899), s. 3, Ben. Code; and in Angul and the Khondmals by the Angul District Regulation, 1894 (I of 1894), s. 3, *ibid*. It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, *infra*, to be in force in the following Scheduled Districts, namely :—

> The Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum [Gazette of India, 1881, Pt. I, p. 504; the District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894; the District of Lohárdaga is now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44]; and the North-Western Provinces Tarái, Gazette of India, 1876, Pt. I, p. 505; the Scheduled Districts in Ganjam and Vizagapatam, *ibid*, 1899, Pt. I, p. 720.

It has been extended, by notification under s. 16 of the Burma Laws Act, 1898 (XIII of 1898), to the Civil Station of Lashio in the State of North Hsenwi, Burma Gazette, 1898, Pt. I, p. 584.

It has been extended to the Civil Station of Taunggi in the State of Yawng Hwe, *ib.*, 1895, Pt. I, p. 550.

[4] For notification issued by the Government of the United Provinces under this power, *see* U. P. R. & O.

All pounds established, pound-keepers appointed and villages determined under Act No. III of 1857 [1] (*relating to trespasses by cattle*) shall be deemed to be respectively established, appointed and determined under this Act.

Interpretation-clause.

3. In this Act,—

officer of police includes also village-watchmen, and

cattle includes also elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats, and kids, [2][and

[3] local authority means any body of persons for the time being invested by law with the control and administration of any matters within a specified local area, and

local fund means any fund under the control or management of a local authority.]

CHAPTER II.

POUNDS AND POUND-KEEPERS.

Establishment of pounds.

4. Pounds shall be established at such places as the Magistrate of the District, subject to the general control of the Local Government, from time to time directs.[4]

The village by which every pound is to be used shall be determined by the Magistrate of the District.[5]

Control of pounds. Rates of charge for feeding impounded cattle.

5. The pounds shall be under the control of the Magistrate of the District; and he shall fix, and may from time to time alter, the rates of charge for feeding and watering impounded cattle.

Appointment of pound-keepers. *Ex officio* pound-keepers in Madras and Bombay.

6. The Magistrate of the District shall also appoint for each pound a pound-keeper:

Provided that, in the Presidency of Fort St. George, the heads of villages and, in the Presidency of Bombay, the police pátils, or (where there are no police pátils) the heads of villages shall be *ex officio* the keepers of village pounds.

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[1] Act III of 1857 is repealed by this Act—*see* Schedule.

[2] These words were added to s. 3 by the Cattle-trespass Act (1871) Amendment Act, 1891 (I of 1891), s. 2, General Acts, Vol. IV.

[3] *Cf.* definition in s. 3 (*28*) of the General Clauses Act, 1897 (X of 1897), which s. 4 (*2*) applies to all Acts passed after the 14th January 1887.

[4] For rules and forms as to cattle-pounds in Sind, *see* Bom. R. & O.

[5] In the Civil Station of Lashio in the Shan State of North Hsenwi, the jurisdiction, powers and duties of a District Magistrate or of a Subdivisional Magistrate, being a Magistrate of the first class, are exercised by the Superintendent of the Northern Shan States and every Assistant Superintendent of the Shan States, respectively—*see* Burma Gazette, 1898, Pt. I, p. 585.

Every pound-keeper appointed by the Magistrate of the District may be suspended or removed by such Magistrate. Suspension or removal of pound-keepers.

Any pound-keeper may hold simultaneously any other office under Government. Pound-keepers may hold other offices.

Every pound-keeper shall be deemed a public servant within the meaning of the Indian Penal Code.[1] XLV of 1860 Pound-keepers to be "public servants."

Duties of Pound-keepers.

7. Every pound-keeper shall keep such registers and furnish such returns as the Local Government from time to time directs.[2] To keep registers and furnish returns.

8. When cattle are brought to a pound, the pound-keeper shall enter in his register,— To register seizures.

(*a*) the number and description of the animals,
(*b*) the day and hour on and at which they were so brought,
(*c*) the name and residence of the seizer, and
(*d*) the name and residence of the owner, if known,

and shall give the seizer or his agent a copy of the entry.

9. The pound-keeper shall take charge of, feed and water the cattle until they are disposed of as hereinafter directed. To take charge of and feed cattle.

CHAPTER III.

IMPOUNDING CATTLE.

10. The cultivator or occupier of any land, Cattle damaging land.

or any person who has advanced cash for the cultivation of the crop or produce on any land,

or the vendee or mortgagee of such crop or produce or any part thereof,

may seize or cause to be seized any cattle trespassing on such land, and doing damage thereto or to any crop or produce thereon, and [3][send them or cause them to be sent within twenty-four hours] to the pound established for the village in which the land is situate.

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[1] General Acts, Vol. I.

[2] For notification prescribing registers and returns in Burma, *see* Burma Gazette, 1902, Pt. I, p. 794.

[3] These words in s. 10 were substituted for the words " take them or cause them to be taken without unnecessary delay " by the Cattle-trespass Act (1871) Amendment Act, 1891 (I of 1891), s. 3, General Acts, Vol. IV.

Police to aid seizures.

All officers of police shall, when required, aid in preventing (*a*) resistance to such seizures, and (*b*) rescues from persons making such seizures.

Cattle damaging public roads, canals and embankments.

[1] **11.** Persons in charge of public roads, pleasure-grounds, plantations, canals, drainage-works, embankments and the like and officers of police, may seize or cause to be seized any cattle doing damage to such roads, grounds, plantations, canals, drainage-works, embankments and the like, or the sides or slopes of such roads, canals, drainage-works or embankments or found straying thereon,

and shall [2][send them or cause them to be sent within twenty-four hours] to the nearest pound.

Fines for cattle impounded.

12. For every head of cattle impounded as aforesaid, the pound-keeper shall levy a fine according to the following scale [3] :—

Elephant	two rupees.
Camel or buffalo	eight annas.
Horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow or heifer	four ,,
Calf, ass or pig	two ,,
Ram, ewe, sheep, lamb, goat or kid	one anna.

[4] Provided that, when it appears to the Local Government from the report of a Magistrate of a District, or on the representation of a local authority that, in any local area subject to the jurisdiction or control of such Magistrate or authority, cattle are habitually allowed to trespass on land and damage crops or other produce thereon, the Local Government may, by notification in the official Gazette, direct that, for every head of cattle of any kind specified therein which may be seized within such local area and impounded as aforesaid, the pound-keeper shall levy such fine, not exceeding double the fine mentioned in the foregoing scale, as may be prescribed in the notification.[5]

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[1] As to the application of s. 11 to forests, *see* the Indian Forest Act, 1878 (VII of 1878), s. 69, Gneeral, Acts, Vol. II; the Burma Forest Act, 1902 (Bur. Act IV of 1902), s. 49; the Assam Forest Regulation, 1891 (VII of 1891), s. 66, E. B. and A. Code; to railways, *see* the Indian Railways Act, 1890 (IX of 1890), s. 125 (*1*), General Acts, Vol. IV.

[2] These words in s. 11 were substituted for the words "take them without unnecessary delay" by the Cattle-trespass Act (1871) Amendment Act, 1891 (I of 1891), s. 4, General Acts, Vol. IV.

[3] For power to prescribe a different scale for cattle impounded under Forest laws, *see* the Indian Forest Act, 1878 (VII of 1878), s. 70, *infra;* the Burma Forest Act, 1902 (Bur. Act IV of 1902), s. 57; and the Assam Forest Regulation, 1891 (VII of 1891), s. 67, E. B. and A Code. As to additional penalties in the case of cattle trespassing on a railway, *see* the Indian Railways Act, 1890 (IX of 1890), s. 125 (*1*) and (*2*), General Acts, Vol. IV.

[4] This proviso was added to the first paragraph of s. 12 by the Cattle-trespass Act (1871) Amendment Act, 1891 (I of 1891), s. 5 (*1*), General Acts, Vol. IV.

[5] For notifications under this power issued for various local areas by the—
(*a*) Government of Bombay, *see* Bom. R. & O.;
(*b*) Chief Commissioner, Central Provinces, *see* C. P. R. & O.;
(*c*) Government of Madras, *see* Mad. R. & O.;
(*d*) Government of the United Provinces of Agra and Oudh, *see* U. P. R. & O.;
(*e*) Government of Burma, *see* Burma Gazette, 1903, Pt. I, p. 98.

All fines so levied shall be sent to the Magistrate of the District through such officer as the Local Government from time to time directs.[1]

A list of the fines and of the rates of charge for feeding and watering cattle shall be stuck up in a conspicuous place on or near to every pound. List of fines and charges for feeding.

[2][The Local Government may at any time, by notification in the official Gazette, cancel or vary a notification under the proviso to the first paragraph of this section.]

CHAPTER IV.

Delivery or Sale of Cattle.

13. If the owner of the impounded cattle or his agent appear and claim the cattle, the pound-keeper shall deliver them to him on payment of the fines and charges incurred in respect of such cattle. Procedure when owner claims the cattle and pays fines and charges.

The owner or his agent, on taking back the cattle, shall sign a receipt for them in the register kept by the pound-keeper.

14. If the cattle be not claimed within seven days from the date of their being impounded, the pound-keeper shall report the fact to the officer in charge of the nearest police-station, or to such other officer as the Magistrate of the District appoints in this behalf. Procedure if cattle be not claimed within a week.

Such officer shall thereupon stick up in a conspicuous part of his office a notice stating—

(*a*) the number and description of the cattle,
(*b*) the place where they were seized,
(*c*) the place where they are impounded,

and shall cause proclamation of the same to be made by beat of drum in the village and at the market-place nearest to the place of seizure.

If the cattle be not claimed within seven days from the date of the notice, they shall be sold by public auction by the said officer, or an officer of his establishment deputed for that purpose, at such place and time and subject to such conditions as the Magistrate of the District by general or special order from time to time directs:

Provided that, if any such cattle are, in the opinion of the Magistrate of the District, not likely to fetch a fair price if sold as aforesaid, they may be disposed of in such manner as he thinks fit.

15. If the owner or his agent appear and refuse to pay the said fines and expenses, on the ground that the seizure was illegal and that the Delivery to owner disputing

[1] For notification issued under this clause for Burma, *see* Burma Gazette, 1902, Pt. I, p. 37.

[2] This paragraph was added to s. 12 by the Cattle-trespass Act (1871) Amendment Act, 1891 (I of 1891), s. 5 (*2*), General Acts, Vol. IV.

legality of seizure but making deposit.

owner is about to make a complaint under section 20, then, upon deposit of the fines and charges incurred in respect of the cattle, the cattle shall be delivered to him.

Procedure when owner refuses or omits to pay the fines and expenses.

16. If the owner or his agent appear and refuse or omit to pay or (in the case mentioned in section 15) to deposit the said fines and expenses, the cattle, or as many of them as may be necessary, shall be sold by public auction by such officer at such place and time, and subject to such conditions, as are referred to in section 14.

Deduction of fines and expenses.

The fines leviable and the expenses of feeding and watering, together with the expenses of sale, if any, shall be deducted from the proceeds of the sale.

Delivery of unsold cattle and balance of proceeds.

The remaining cattle and the balance of the purchase-money, if any, shall be delivered to the owner or his agent, together with an account showing—

(*a*) the number of cattle seized,
(*b*) the time during which they have been impounded,
(*c*) the amount of fines and charges incurred,
(*d*) the number of cattle sold,
(*e*) the proceeds of sale, and
(*f*) the manner in which those proceeds have been disposed of.

Receipt.

The owner or his agent shall give a receipt for the cattle delivered to him and for the balance of the purchase-money (if any) paid to him according to such account.

Disposal of fines, expenses and surplus proceeds of sales.

17. The officer by whom the sale was made shall send to the Magistrate of the District the fines so deducted.

The charges for feeding and watering deducted under section 16 shall be paid over to the pound-keeper, who shall also retain and appropriate all sums received by him on account of such charges under section 13.

The surplus unclaimed proceeds of the sale of cattle shall be sent to the Magistrate of the District, who shall hold them in deposit for three months, and, if no claim thereto be preferred and established within that period, shall, at its expiry, dispose of them as hereinafter provided.

Application of fines and unclaimed proceeds of sale.

18. Out of the sums received on account of fines and the unclaimed proceeds of the sale of cattle shall be paid—

(*a*) the salaries allowed to pound-keepers under the orders of the Local Government;
(*b*) the expenses incurred for the construction and maintenance of pounds, or for any other purpose connected with the execution of this Act;

and the surplus [1] (if any) shall be applied under orders of the Local Government to the construction and repair of roads and bridges and to other purposes of public utility.

Officers and pound-keepers not to purchase cattle at sales under Act.

19. No officer of police or other officer or pound-keeper appointed under the provisions herein contained shall, directly or indirectly, purchase any cattle at a sale under this Act.

Pound-keepers when not to release impounded cattle.

No pound-keeper shall release or deliver any impounded cattle otherwise than in accordance with the former part of this Chapter, unless such release or delivery is ordered by a Magistrate or Civil Court.

CHAPTER V.[2]

COMPLAINTS OF ILLEGAL SEIZURE OR DETENTION.

Power to make complaints.

20. Any person whose cattle have been seized under this Act, or, having been so seized, have been detained in contravention of this Act, may, at any time within ten days from the date of the seizure, make a complaint [3] to the Magistrate of the District or any Magistrate authorized to receive and try charges without reference by the Magistrate of the District.

Procedure on complaint.

21. The complaint shall be made by the complainant in person, or by an agent personally acquainted with the circumstances. It may be either in writing or verbal. If it be verbal, the substance of it shall be taken down in writing by the Magistrate.

If the Magistrate, on examining the complainant or his agent, sees reason to believe the complaint to be well founded, he shall summon the person complained against, and make an enquiry into the case.

Compensation for illegal seizure or detention.

22. If the seizure or detention be adjudged illegal, the Magistrate shall award to the complainant, for the loss caused by the seizure or detention, reasonable compensation, not exceeding one hundred rupees, to be paid by the person who made the seizure or detained the cattle, together with all fines paid and expenses incurred by the complainant in procuring the release of the cattle,

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[1] As to the crediting of this surplus to local funds, *see* s. 31, *infra*.

[2] This Chapter was substituted for the original Ch. V by the Cattle-trespass Act (1871) Amendment Act, 1891 (I of 1891), s. 6, General Acts, Vol. IV.

[3] The term " offence " as defined by s. 4 (*o*) of the Code of Criminal Procedure, 1898 (Act V of 1898), includes any act in respect of which a complaint may be made under this section.

Offences under this section may be tried in a summary way, see Act V of 1898, s. 260 (*1*) (*m*), General Acts, Vol. V.

Release of cattle.

and, if the cattle have not been released, the Magistrate shall, besides awarding such compensation, order their release and direct that the fines and expenses leviable under this Act shall be paid by the person who made the seizure or detained the cattle.

Recovery of compensation.

23. The compensation, fines and expenses mentioned in section 22 may be recovered as if they were fines imposed by the Magistrate.[1]

CHAPTER VI.

PENALTIES.

Penalty for forcibly opposing the seizure of cattle or rescuing the same.

24. Whoever forcibly opposes the seizure of cattle liable to be seized under this Act,

and whoever rescues the same after seizure, either from a pound, or from any person taking or about to take them to a pound, such person being near at hand and acting under the powers conferred by this Act,

shall, on conviction before a Magistrate, be punished with imprisonment for a period not exceeding six months, or with fine not exceeding five hundred rupees, or with both.

Recovery of penalty for mischief committed by causing cattle to trespass.

[2] **25.** Any fine imposed [3][under the next following section or] for the offence of mischief by causing cattle to trespass on any land may be recovered by sale of all or any of the cattle by which the trespass was committed, whether they were seized in the act of trespassing or not, and whether they are the property of the person convicted of the offence, or were only in his charge when the trespass was committed.

Penalty for damage caused to land or crops or public roads by pigs.

26. Any owner or keeper of pigs who, through neglect or otherwise, damages or causes or permits to be damaged any land, or any crop or produce of land, or any public road,[4] by allowing such pigs to trespass thereon, shall, on conviction before a Magistrate, be punished with fine not exceeding ten rupees.

[5][The Local Government, by notification in the official Gazette, may from time to time, with respect to any local area specified in the notification, direct that the foregoing portion of this section shall be read

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[1] *See* ss. 63 to 70 of the Indian Penal Code (Act XLV of 1860), General Acts, Vol. I, and s. 386 of the Code of Criminal Procedure, 1898 (Act V of 1898), General Acts, Vol. V; *cf.* also, s. 25 of the General Clauses Act, 1897 (X of 1897), General Acts, Vol. IV.

[2] As to the application of s. 25 in the case of cattle trespassing on a railway, *see* the Indian Railways Act, 1890 (IX of 1890), s. 125 (*3*), General Acts, Vol. IV.

[3] These words in s. 25 were inserted by the Cattle-trespass Act (1871) Amendment Act, 1891 (I of 1891), s. 7, General Acts, Vol. IV.

[4] "Public road" in s. 26 includes a railway—*see* the Indian Railways Act, 1890 (IX of 1890), s. 125 (*4*), General Acts, Vol. IV.

[5] This paragraph was added to s. 26 by the Cattle-trespass Act (1871) Amendment Act, 1891 (I of 1891), s. 8, General Acts, Vol. IV.

as if it had reference to cattle generally, or to cattle of a kind described [1] in the notification, instead of to pigs only, or as if the words "fifty rupees" were substituted for the words "ten rupees," or as if there were both such reference and such substitution.]

[2][The Local Government may at any time, by notification in the official Gazette, cancel or vary a notification under this section.]

Penalty on pound-keeper failing to perform duties.

27. Any pound-keeper releasing or purchasing or delivering cattle contrary to the provisions of section 19, or omitting to provide any impounded cattle with sufficient food and water, or failing to perform any of the other duties imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished, on conviction before a Magistrate, with fine not exceeding fifty rupees.

Such fines may be recovered by deductions from the pound-keeper's salary.

Application of fines recovered under section 25, 26 or 27.

28. All fines recovered under section 25, section 26 or section 27 may be appropriated in whole or in part as compensation for loss or damage proved to the satisfaction of the convicting Magistrate.

CHAPTER VII.

Suits for Compensation.

Saving of right to sue for compensation.

29. Nothing herein contained prohibits any person whose crops or other produce of land have been damaged by trespass of cattle from suing for compensation in any competent Court.

Set-off.

30. Any compensation paid to such person under this Act by order of the convicting Magistrate shall be set-off and deducted from any sum claimed by or awarded to him as compensation in such suit.

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[1] For notification—
(1) As to elephants and buffaloes issued by the Chief Commissioner, Assam, *see* Assam Rules Manual, Ed. 1893, p. 25.
(2) As to Bombay, *see* fifth footnote on p. 166. The notifications there referred to were also issued under the power conferred by this section.
(3) As to certain areas in the Central Provinces, *see* C. P. R. & O.
(4) As to certain areas in the Presidency of Madras, *see* Mad. R. & O.
(5) As to certain areas in the Province of Agra, *see* the U. P. R. & O.
(6) As to Bengal, *see* Calcutta Gazette, 1898, Pt. 1, p. 890.
(7) As to Cantonment of Nasirabad (Ajmer-Merwára), *see* Gazette of India, 1898, Pt. II, p. 935, Aj. R. & O.

[2] This paragraph was added to s. 26 by the Cattle-trespass Act (1871) Amendment Act, 1891 (I of 1891), s. 8, General Acts, Vol. IV.

CHAPTER VIII.[1]

SUPPLEMENTAL.

Power for Local Government to transfer certain functions to local authority and direct credit of surplus receipts to local fund.

31. The Local Government may, from time to time, by notification in the official Gazette,—

(*a*) transfer to any local authority[2] within any part of the territories under its administration in which this Act is in operation, all or any of the functions of the Local Government or the Magistrate of the District under this Act, within the local area subject to the jurisdiction of the local authority, or[3]

(*b*) direct that the whole or any part of the surplus accruing in any district under section 18 of this Act shall be placed to the credit of such local fund or funds[2] as may be formed for any local area or local areas comprised in that district,[4]

and may, from time to time, by notification in the official Gazette, cancel or vary any notification under this section.

SCHEDULE.

(*See section 2.*)

Number and year.	Title of Act.
III of 1857 .	An Act relating to trespasses by cattle.
V of 1860 .	An Act to amend Act III of 1857 (relating to trespasses by cattle).
XXII of 1861 .	An Act to amend Act III of 1857 (relating to trespasses by cattle).

[1] Ch. VIII was added by the Cattle-trespass Act (1871) Amendment Act, 1891 (I of 1891), s. 9, General Acts, Vol. IV.

[2] For special enactments *see*, as to the Central Provinces, the Central Provinces Local Self-government Act, 1883 (I of 1883), s. 9, cl. (*f*), and s. 23 (*1*), cl (*c*), C. P. Code; as to the United Provinces, the United Provinces District Boards Act, 1906 (U. P. Act III of 1906), s. 43 (*d*), U. P. Code; and as to the Punjab, and the Punjab District Boards Act, 1883 (XX of 1883), s. 20, cl. (*n*), P. and N.-W. Code.

[3] For notifications under this clause issued by the—
(*a*) Government of Bombay, *see* Bom. R. & O.;
(*b*) Government of Burma, *see* Burma Gazette, 1896, Pt. I, pp. 19 and 500;
(*c*) Chief Commissioner, Central Provinces, *see* C. P. R. & O.;
(*d*) Government of Madras, *see* Mad. R. & O.
(*e*) Government of the Punjab, *see* Punjab Gazette, 1902, Pt. I, p. 418;
(*f*) Chief Commissioner, North-West Frontier Province, *see* Gazette of India, 1902, Pt. II, p. 1333;
(*g*) Chief Commissioner, Ajmer-Merwara, *see* Gazette of India, 1907, Pt. II, p. 744.

[4] For notifications issued under clause (*b*) by the—
(*a*) Government of Bombay for certain local areas, *see* Bom. R. & O.;
(*b*) Government of Burma, *see* Burma Gazette, 1894, Pt. I, p. 13, and *ibid*, 1896, Pt. I, p. 501;
(*c*) Government of Bengal, for such portions of Calcutta as defined in the Calcutta Municipal Act, 1899, which are not included in the Presidency town, *see* Gazette, 1901, Pt. 1—B, dated 6th February 1901;
(*d*) Chief Commissioner, North-West Frontier Province, *see* Gazette of India, 1904, Pt. II, p. 1172.

ACT No. V OF 1871.

[1] * * * * * *

15. Any warrant of commitment under Regulation III of 1818 [2] of the Bengal Code (*for the Confinement of State Prisoners*), Regulation II of 1819 [3] of the Madras Code (*for the Confinement of State Prisoners*), and Regulation XXV of 1827 [4] of the Bombay Code (*for the Confinement of State Prisoners, and for the Attachment of the Lands of Chieftains and others for Reasons of State*), may be directed to the Superintendent in the same manner as the same might have been directed to the Sheriff under Act No. XXXIV of 1850 [5] (*for the better custody of State Prisoners*), and Act No. III of 1858 [5] (*to amend the Law relating to the arrest and detention of State Prisoners*). **Warrants under Regulations for confinement of State prisoners.**

[1] * * * * * *

ACT No. XXIII OF 1871.[6]

[*8th August 1871.*]

An Act to consolidate and amend the law relating to Pensions and Grants by Government of money or land-revenue.

WHEREAS it is expedient to consolidate and amend the law relating **Preamble.**

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[1] The whole of this Act except section 15 was repealed by the Prisoners Act, 1900 (III of 1900), General Acts, Vol. V.

[2] Short title, The Bengal State Prisoners' Regulation, 1818, Ben. Code.

[3] Mad. Code.

[4] Bom. Code.

[5] Short titles, The State Prisoners Act, 1850, and The State Prisoners Act, 1858, respectively, General Acts, Vol. I.

[6] For the Statement of Objects and Reasons, *see* Gazette of India, 1871, Pt. V, p. 141; for Proceedings in Council, *see ibid*, 1871, Supplement, pp. 314, 401, 683, 1056, 1147.

This Act has been declared in force in—

Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (*1*) and Sch. I, Bur. Code;

the Arakan Hill District (except ss. 1 and 2 and the Schedule) by the Arakan Hill District Laws Regulation, 1874 (IX of 1874), s. 3, *ibid;*

British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890), s. 3.

It is included in the Schedule to the Santhál Parganas Settlement Regulation, 1872 (III of 1872), as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (III of 1899), Ben. Code.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the following Scheduled Districts, namely :—

The Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singhbhum. *See* Gazette of India, 22nd October, 1881, Pt. I, p. 504. The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894. The District of Lohárdaga is now called the Ranchi District, Calcutta Gazette, 1899, Pt. I, p. 44.

The Act applies to certain allowances known as the Oudh Wasikas as if they were pensions of the classes referred to in sections 4 and 11 of the Act. *See* the Oudh Wasikas Act, 1886 (XXI of 1886), s. 2.

to pensions and grants by Government of money or land-revenue; It is hereby enacted as follows:—

I.—Preliminary.

Short title.

1. This Act may be called the Pensions Act, 1871.

Extent of Act. Commencement.

It extends to the whole of British India;

And it shall come into force on the date of the passing thereof

* * * * [1]

Enactments repealed.

2. The enactments mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column of the said schedule.

Saving of rules.

But all rules in regard to the award and payment of pensions or grants of money or land-revenue, and the identification of the persons entitled to receive them, made under any such enactment, shall be deemed to have been made under this Act so far as they are consistent therewith.

Interpretation-section.

3. In this Act, the expression "grant of money or land-revenue" includes anything payable on the part of Government in respect of any right, privilege, perquisite or office.

II.—Rights to Pensions.

Bar of suits relating to pensions.

[2] **4.** Except as hereinafter provided, no Civil Court shall entertain any suit relating to any pension or grant of money or land-revenue conferred or made by the British or any former Government, whatever may have been the consideration for any such pension or grant, and whatever may have been the nature of the payment, claim or right for which such pension or grant may have been substituted.

Claims to be made to Collector or other authorized officer.

5. Any person having a claim relating to any such pension or grant may prefer such claim to the Collector of the District or Deputy Commissioner or other officer authorized in this behalf by the Local Government; and such Collector, Deputy Commissioner or other officer shall dispose of such claim in accordance with such rules [3] as the Chief Reve-

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[1] The words "but not so as to affect any suit in respect of a pension or grant of money or land-revenue which may have been instituted before such date" were repealed by the Repealing and Amending Act, 1891 (XII of 1891).

[2] *See* reference to s. 4 in last paragraph of footnote above.

[3] For notifications prescribing such rules under the powers conferred by this section in—

Bombay . . . . . *See* Bom. R. & O.

United Provinces of Agra and Oudh *See* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 42.

nue-authority may, subject to the general control of the Local Government, from time to time prescribe in this behalf.

Civil Court empowered to take cognizance of such claims.

6. A Civil Court, otherwise competent to try the same, shall take cognizance of any such claim upon receiving a certificate from such Collector, Deputy Commissioner or other officer authorized [1] in that behalf that the case may be so tried, but shall not make any order or decree in any suit whatever by which the liability of Government to pay any such pension or grant as aforesaid is affected directly or indirectly.

Pensions for lands held under grants in perpetuity.

7. Nothing in sections 4 and 6 applies to—

(1) any inám of the class referred to in section 1 of Madras Act No. IV of 1862;[2]

(2) pensions heretofore granted by Government in the territories respectively subject to the Lieutenant-Governors of Bengal and the North-Western Provinces, either wholly or in part as an indemnity for loss sustained by the resumption by a Native Government of lands held under sanads purporting to confer a right in perpetuity. Such pensions shall not be liable to resumption on the death of the recipient, but every such pension shall be capable of alienation and descent, and may be sued for and recovered in the same manner as any other property.

III.—Mode of Payment.

Payment to be made by Collector or other authorized officer.

8. All pensions or grants by Government of money or land-revenue shall be paid by the Collector or the Deputy Commissioner or other authorized officer, subject to such rules [1] as may, from time to time, be prescribed by the Chief Controlling Revenue-authority.

Saving of rights of grantees of land-revenue.

9. Nothing in sections 4 and 8 shall affect the right of a grantee of land-revenue, whose claim to such grant is admitted by Government, to recover such revenue from the persons liable to pay the same under any law for the time being in force for the recovery of the rent of land.

Commutation of pensions.

10. The Local Government may, with the consent of the holder,

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[1] For instances of notifications authorizing officers under the powers conferred by this section and prescribing rules, in Bombay, *see* Bom. R. & O.

[2] *i.e.*, "ináms of the classes described in cl. 1, s. 2, [Mad.] Regulation IV of 1831, which have been, or shall be, enfranchised by the Inám Commissioner and converted into freeholds in perpetuity, or into absolute freeholds in perpetuity." The classes so described are "hereditary or personal grants of money or of land-revenue, however denominated, conferred by the authority of the Governor in Council [or which, having been made by any Native Government, have been confirmed or continued by the British Government—Act XXXI of 1836] in consideration of services rendered to the State, or in lieu of resumed offices or privileges, or of zamíndáris or páleiyams forfeited or held under attachment or management by the officers of Government, or as a yaumiá or charitable allowance, or as a pension."

order the whole or any part of his pension or grant of money or land-revenue to be commuted for a lump sum on such terms as may seem fit.

IV.—Miscellaneous.

Exemption of pension from attachment.

[1] **11.** No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance,

and no money due or to become due on account of any such pension or allowance,

shall be liable to seizure, attachment or sequestration by process of any Court in British India, at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court.

Assignments, etc., in anticipation of pension, to be void.

12. All assignments, agreements, orders, sales and securities of every kind made by the person entitled to any pension, pay or allowance mentioned in section 11, in respect of any money not payable at or before the making thereof, on account of any such pension, pay or allowance, or for giving or assigning any future interest therein, are null and void.

Reward to informers.

13. Whoever proves to the satisfaction of the Local Government that any pension is fraudulently or unduly received by the person enjoying the benefit thereof shall be entitled to a reward equivalent to the amount of such pension for the period of six months.

Power to make rules.

14. The Chief Controlling Revenue-authority may, with the consent of the Local Government, from time to time make rules [2] consistent with this Act respecting all or any of the following matters:—

(1) the place and times at which, and the person to whom, any pension shall be paid;
(2) inquiries into the identity of claimants;
(3) records to be kept on the subject of pensions;
(4) transmission of such records;
(5) correction of such records;

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[1] *See*, too, s. 60, cl. (*g*), of the Code of Civil Procedure, 1908 (Act V of 1908), General Acts, Vol. VI. *See* also last paragraph of footnote under section 1, *supra*.

[2] For notifications making rules under the powers conferred by this section in—

Bombay	*see* Bom. R. & O.;
Madras	*see* Mad. R. & O.;
United Provinces of Agra and Oudh	*see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 43;
Central Provinces	*see* C. P. R. & O.

(6) delivery of certificates to pensioners;
(7) registers of such certificates;
(8) reference to the Civil Court, under section 6, of persons claiming a right of succession to, or participation in, pensions or grants of money or land-revenue payable by Government;

and generally for the guidance of officers under this Act.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

SCHEDULE.

(*See section 2.*)

Number and year.	Title or subject.	Extent of repeal.
	I.—Bengal Regulations.	
XXIV of 1793 . .	A Regulation for re-enacting, with Modifications, the Rules passed by the Governor General in Council on the 10th June 1791, for determining the Continuance or Discontinuance of the Pensions heretofore paid by the Proprietors and Farmers of Land, but included in the Jama or Revenue payable to Government at the Decennial Settlement, and also of the Pensions, heretofore paid from the Sáir, abolished.	The whole.
XXXIV of 1795 .	A Regulation for re-enacting, with Modifications, the Rules respecting the Pensions payable from the Government and Mulki Treasuries in the Province of Benares.	The whole.
XXIV of 1803 . .	A Regulation for trying the Validity of Titles of Persons receiving, or claiming a right to receive, Pensions, under the Denominations of Sáliánah, Rozínah, or any other Description of Grant, in the Provinces ceded by the Nawáb Wazir to the Honourable the English East India Company.	The whole.
I of 1804 . .	A Regulation for the better Management of the Invalid Jágírdár Establishments and of the Invalid Pension Establishments.	Sections 23 to 26 inclusive.
XXII of 1806 . .	A Regulation for modifying the Rules hitherto observed in the admission and Payment of Claims to Pensions.	The whole.
II of 1811 .	A Regulation for amending the existing Rules for the support of Invalid Native Commissioned and Non-Commissioned Officers.	The whole.

SCHEDULE—*continued.*

Number and year.	Title or subject.	Extent of repeal.
	I.—BENGAL REGULATIONS—*continued.*	
XI of 1813 . .	A Regulation for modifying some of the Rules before established respecting the Payment of Pensions and for preventing the abuses committed in the receipt of Pensions.	The whole.
VI of 1817 . .	A Regulation to explain the Purport and Intent of the Provision contained in Section II, Regulation XXIV, 1803.	The whole.
	II.—MADRAS REGULATIONS.	
I of 1803 . . .	A Regulation for defining the Duties of the Board of Revenue, and for determining the Extent of the Powers vested in the Board of Revenue.	Section 43.
II of 1803 . .	A Regulation for describing and determining the Conduct to be observed by Collectors in certain cases.	Section 30.
IV of 1831 . .	A Regulation for better securing to the Grantees personal or hereditary Grants of Money or of Land Revenue, conferred by the Government in consideration of Services rendered to the State, or in lieu of resumed Offices or Privileges, or of Zamíndáris, or Páleiyams forfeited or held under Attachment or Management by the Officers of Government, or as Yaumias or Pensions.	The whole.
	III.—BOMBAY REGULATION.	
XXIX of 1827 .	A Regulation for bringing under the operation of the Regulations the Bombay Territories in the Dekkhan and Khandesh.	Section 6, clauses 2 and 3.
	IV.—ACTS.	
XXXI of 1836 . .	Government Grants	The whole.
XXIII of 1838 .	Exemption of Grants from attachment .	The whole.
VI of 1849 . .	An Act for securing Military and Naval Pensions and Superannuation Allowances.	The whole.

THE CRIMINAL TRIBES ACT, 1871.

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ACT No. XXVII OF 1871.[1]

[*12th October, 1871.*]

An Act for the Registration of Criminal Tribes and Eunuchs.

Preamble. WHEREAS it is expedient to provide for the registration, surveillance

[1] For Statement of Objects and Reasons, *see* Gazette of India, 1870, Pt. V. p. 491; and for Proceedings in Council, *see ibid*, Supplement, pp. 1200 and 1344, and *ibid*, 1871, pp. 211, 1055, 1182, 1217 and 1415.

Local Governments are empowered, with the previous sanction of the Governor General in Council, to declare any provisions of the Act to be in force in the whole or any part of their territories.

Ss. 1 and 20 of this Act extend to the whole of British India, and the rest of the Act extends to Bengal (portions of which now form Eastern Bengal), the United Provinces and the Punjab (portions of which now form the North-West Frontier Province)—*see* the first paragraph of s. 1. Part I of the Act has been declared in force in the whole of the Bombay Presidency, *see* the seventh footnote on p. 4.

and control of certain criminal tribes and eunuchs; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Criminal Tribes Act, 1871.

[*Commencement.*] *Rep. Act XVI of 1874, section 1 and Schedule, Part I.*

Local extent.

This section and section 20 extends to the whole of British India: the rest of this Act extends only to the territories under the governments of the Lieutenant-Governors of [1][Bengal,] the [2] North-Western Provinces and the [3] Punjab respectively, and under the administration of the Chief Commissioner of Oudh [2]:

[4] Provided that any [5] Local Government, with the previous sanction of the Governor General in Council, may, by notification in the [6] local

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It has been declared, by notification under s. 3 of the Scheduled Districts Act, 1874 (XIV of 1874), (General Acts, Vol. II), to be in force in the following Scheduled Districts, namely :—

the Hazáribágh, Ranchi, Palamau and Manbhum Districts, and Pargana Dhálbhum and the Kolhán in the Singhbhum District, in the Chota Nagpur Division—*see* Ben. Code.

It has been extended, under section 5 of the same Act, to Ajmer-Merwara, *see* Notification No. 171-J., dated 19th October, 1877, Aj. Code, and to the Tarái Parganas of the Province of Agra, *see* Notification No. 1554, dated 22nd September, 1876, U. P. Code.

It has been declared by notification under s. 2, Regulation II of 1880, not to apply in the Lushai Hills, *see* E. B. and A. Code.

[1] The word "Bengal" was added by the Criminal Tribes (Amendment) Act, 1876 (VII of 1876), section 1, *infra*, Bengal, then included the districts since transferred to the Government of Eastern Bengal and Assam, *see* Proclamation No. 2832, dated the 1st September, 1905, Gen. R. and O.

[2] These provinces are now known as the United Provinces of Agra and Oudh, and the Lieutenant-Governor and Chief Commissioner is now known as the Lieutenant-Governor of those Provinces, *see* Proclamation No. 996-P., dated the 22nd March, 1902, Gazette of India, 1902, Pt. I, p. 228, and the United Provinces (Designation) Act, 1902 (VII of 1902), General Acts, Vol. V.

[3] References in the North-Western Frontier Province to the territories under the Government of the Lieutenant-Governor of the Punjab are to be construed as referring to the North-West Frontier Province, *see* s. 6 (1) (*a*) of the North-West Frontier Province Law and Justice Regulation, 1901 (VII of 1901), P. and N.-W. Code.

[4] This proviso was added by section 2 of the Criminal Tribes' Act Amendment Act, 1897 (II of 1897), General Acts, Vol. IV.

[5] In the North-West Frontier Province, for "Local Government" read "Chief Commissioner," *see* s. 6 (1) (*b*) of the North-West Frontier Province Law and Justice Regulation, 1901 (VII of 1901), P. and N.-W. Code, and in Eastern Bengal and Assam, the Local Government of that Province, *see* the Bengal and Assam Laws Act, 1905 (VII of 1905), s. 3 and Sch. D, Pt. I, cl. I, E. B. and A. Code.

[6] In the North-West Frontier Province, for "local official Gazette" read "Gazette of India," *see* s. 6 (1) (*g*) of Regulation VII of 1901 and in Eastern Bengal and Assam the Eastern Bengal and Assam Gazette, *see* the Bengal and Assam Laws Act, 1905 (VII of 1905), s. 3, and Sch. D, Pt. I, cl. VII, E. B. and A. Code.

official Gazette, declare [1] all or any of the provisions of this Act, as amended by subsequent legislation, to be in force in the whole or any part of the territories under its government.

Definition of tribe, gang and class.

[2]**1A.** In this Act the words "tribe," "gang" and "class" shall be deemed to include any portion or members of a tribe, gang or class.

PART I.

CRIMINAL TRIBES.

Local Government to report what tribes should be declared criminal.

2. If the [3] Local Government has reason to believe that any tribe, gang or class of persons is addicted to the systematic commission of non-bailable offences, it may report the case to the Governor General in Council, and may request his permission to declare such tribe, gang or class to be a criminal tribe.

Report to contain certain particulars.

3. The report shall state the reasons why such tribe, gang or class is considered to be addicted to the systematic commission of non-bailable offences, and, as far as possible, the nature and the circumstances of the offences in which the members of the tribe are supposed to have been concerned; and shall describe the manner in which it is proposed that such tribe, gang or class shall earn its living when the provisions hereinafter contained have been applied to it.

Occupation of wandering tribe to be stated; also proposed residence and means of livelihood.

4. If such tribe, gang or class has no fixed place of residence, the report shall state whether such tribe, gang or class follows any lawful occupation, and whether such occupation is, in the opinion of the [3] Local Government, the real occupation of such tribe, gang or class, or a pretence for the purpose of facilitating the commission of crimes, and shall set forth the grounds on which such opinion is based; and the report shall also specify the place of residence in which such wandering tribe, gang or class is to be settled under the provisions hereinafter contained, and the arrangements which are proposed to be made for enabling it to earn its living therein.

Notification declaring tribe to be criminal.

5. If, upon the consideration of any such report, the Governor General in Council is satisfied that the tribe, gang or class to which it relates ought to be declared criminal, and that the means by which it is proposed that such tribe, gang or class shall earn its living are

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[1] For notification declaring Pt. I of the Act to be in force in the Bombay Presidency including Sind, *see* Notification No. 3536, dated 25th May, 1899, Bombay Government Gazette, 1899, Pt. I, p. 868.

[2] S. 1A was added by s. 3 of the Criminal Tribes Act Amendment Act (II of 1897).

[3] *See* footnote under s. 1, *supra*.

adequate, he may authorize the [1] Local Government to publish in the [2] local Gazette a [3] notification declaring that such tribe, gang or class is a criminal tribe, and thereupon the provisions of this Act shall become applicable to such tribe, gang or class.

Bar of jurisdiction of Courts in questions relating to notification.

6. No Court of Justice shall question the validity of any such notification on the ground that the provisions hereinbefore contained, or any of them, have not been complied with, or entertain in any form whatever the question whether they have been complied with; but every such notification shall be conclusive proof that the provisions of this Act are applicable to the tribe, gang or class specified therein.

Register of members of such tribes.

7. When the notification mentioned in section 5 has been published the [1] Local Government may direct the Magistrate of any district in which such tribe, gang or class, or any part thereof, is at the time resident, to make a register of the members of such tribe, gang or class, or of any part thereof.

The declaration of the [1] Local Government that any such tribe, gang or class, or any part of it, is resident in any district, shall be conclusive proof of such residence.

Procedure in making register.

8. Upon receiving such direction, the said Magistrate shall publish a notice in the place where the register is to be made, calling upon all the members of such tribe, gang or class, or of such portion thereof as is directed to be registered, to appear, at a time and place therein specified, before such persons as he appoints, and to give those persons such information as may be necessary to enable them to make the register.

Penalties for failing to appear, refusing or giving false information.

9. Any member of any such tribe, gang or class who, without lawful excuse, the burthen of proving which shall lie upon him,

shall fail to appear according to such notice,

or who shall intentionally omit to furnish such information,

or who shall furnish, as true, information on the subject which he knows or has reason to believe to be false,

shall be deemed guilty of an offence under the first parts of section 174 or 176 or 177 of the [4] Indian Penal Code, respectively, as the case may be. XLV of 1860.

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[1] *See* footnote under s. 1, *supra*.

[2] *See* footnote under s. 1, *supra*.

[3] For notification declaring the Bhatti family of Jat Sikhs in Hadiara village Lahore District, to be a Criminal Tribe, *see* Punjab Gazette, 1904, Pt. 1, p. 819; the Dher Karals and the Valana Jats of village Bahuman in the Lahore District, *see ibid*, 1907, Pt. I, p. 861.

For notification declaring the tribe known as the Hars or Lurs in Sind to be Criminal Tribes—*see* Bombay Government Gazette, 1899, Pt. 1, p. 868.

For notifications declaring certain tribes in the United Provinces to be Criminal Tribes—*see* N. W. P. and Oudh Gazette, 1874, p. 701, and *ibid*, 1884, Pt. I, p. 317.

[4] For Act XLV of 1860, *see* General Acts, Vol. I.

Charge of register. Reporting desirable alterations.

10. The register, when made, shall be kept by the District Superintendent of Police, who shall, from time to time, report to the said Magistrate any alterations which ought to be made therein, either by way of addition or erasure.

By whom alterations to be made. Notice to persons affected.

11. No alteration shall be made in such register except by or by order of the said Magistrate, and he shall write his initials against every such alteration. Notice shall be given of any such intended alteration, and of the time when, and place where, it is to be made, to every person affected thereby.

Complaints of entries in register.

12. Any person deeming himself aggrieved by any entry made, or proposed to be made, in such register, either when the register is first made or subsequently, may complain to the said Magistrate against such entry, and the Magistrate shall retain such person's name on the register, or enter it therein, or erase it therefrom, as he may see fit.

Every order for the erasure of any such person's name shall state the grounds on which such person's name is erased.

The [1] Commissioner shall have power to review any order of entry, retention or erasure, passed by the said Magistrate on any such complaint, either on appeal by the person registered or proposed to be registered or otherwise.

Settlement of tribe in place prescribed by Local Government. Removal to other place.

13. Any tribe, gang or class, which has been declared to be criminal, and which has no fixed place of residence, may be settled in a place of residence prescribed by the [2] Local Government.

14. Any tribe, gang or class, which has been declared to be criminal, or any part thereof, may, by order of the [2] Local Government, be removed to any other place of residence.

Arrangements to be made prior to settlement or removal.

15. No tribe, gang or class, shall be settled or removed under the provisions of this Act until such arrangements as the [2] Local Government shall, with the concurrence of the Governor General in Council, consider suitable, have been made for enabling such tribe, gang or class, or such part thereof as is to be so settled or removed, to earn a living in the place in or to which it is to be settled or removed.

Transfer of register of persons ordered to be removed.

16. When the removal of any persons has been ordered under this Act, the register of such persons' names shall be transferred to the District Superintendent of Police of the district to which such persons are removed, and the Magistrate of the said district and the Commissioner of the division in which it is situated shall thereupon be empowered to exercise respectively the powers provided in sections 11 and 12.

Power to place tribe in

17. The [2] Local Government may, with the sanction of the Governor

[1] In the North-West Frontier Province for "Commissioner" read "Revenue Commissioner," *see* s. 6 (1) (*f*) of the North-West Frontier Province Law and Justice Regulation, 1901 (VII of 1901), P. and N.-W. Code, p. 549.

[2] *See* footnote to s. 1, *supra*.

General in Council, place any tribe, gang or class, which has been declared to be criminal, or any part thereof, in a reformatory settlement. reformatory settlement.

[1]**17A.** (*1*) The [2]Local Government may establish and maintain reformatory settlements for children and may separate and remove from their parents and place in such a reformatory settlement the children of the registered members of any tribe, gang or class which has been declared to be criminal. Power to place children in reformatory settlements established for children and to apprentice them.

(*2*) For every reformatory settlement for children established under sub-section (*1*) a Superintendent shall be appointed by the Local Government.

(*3*) The Superintendent of a reformatory settlement for children shall be deemed to be the guardian, within the meaning of [3]Act No. XIX of 1850 (*concerning the binding of apprentices*), of every child detained in such settlement; and such Superintendent may, if he shall think fit, and subject to any rules which the Local Government may make in this behalf, apprentice such child under the provisions of the aforesaid Act.

Explanation.—The term "children" in this section includes all persons under the age of eighteen and above the age of four years.

18. The [2]Local Government may, with the previous consent of the Governor General in Council, make [4]rules to prescribe— Power to make rules.

(*1*) the form in which the register shall be made by the said Magistrate;

(*2*) the mode in which the said Magistrate shall publish the notice prescribed in section 8, and the means by which the persons whom it concerns, and the headmen, village-watchmen and landowners or occupiers of the village, in which such persons reside, [5][or the agents of such landowners or occupiers], shall be informed of its publication;

(*3*) the mode in which the notice prescribed in section 11 shall be given;

(*4*) the limits within which persons whose names are on the register shall reside;

(*5*) conditions as to holding passes, under which such persons may be permitted to leave the said limits;

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[1] S. 17A was added by section 4 of the Criminal Tribes Act Amendment Act (II of 1897), General Acts, Vol. IV.

[2] *See* footnote to s. 1, *supra*.

[3] General Acts, Vol. I.

[4] For rules issued under this section for (1) Bombay, *see* Bombay Government Gazette, 1900, Pt. I, pp. 842 and 1111; (2) for the United Provinces, *see* U. P. and O.; and (3) for the Punjab, *see* the Punj. R. and O.

[5] These words were inserted in sub-sec. (2) of s. 18 by section 2 of the Criminal Tribes (Amendment) Act, 1876 (VII of 1876), *infra*.

(*6*) conditions to be inserted in any such pass as to—

(*a*) the places where the holder of the pass may go or reside;

(*b*) the officers before whom, from time to time, he shall be bound to present himself;

(*c*) and the time during which he may absent himself;

(*7*) conditions as to answering at roll-call or otherwise, in order to satisfy the said Magistrate or persons authorized by him, that the persons whose names are on the register are actually present at given times within the said limits;

(*8*) the inspection of the residences and villages of any such tribe, gang or class, and the prevention or removal of contrivances for enabling the residents therein to conceal stolen property, or to leave their place of residence without leave;

(*9*) the terms upon which registered persons may be discharged from the operation of this Act;

(*10*) the mode in which criminal tribes shall be settled and removed;

(*11*) the control and supervision of reformatory settlements;

(*12*) the works on which, and the hours during which, persons placed in a reformatory settlement shall be employed, the rates at which they shall be paid, and the disposal, for the benefit of such persons, of the surplus proceeds of their labour, after defraying the whole or such part of the expenses of their supervision and control as to the [1] Local Government shall seem fit;

(*13*) the discipline to which persons endeavouring to escape from any such settlement, or otherwise offending against the rules for the time being in force, shall be submitted; the periodical visitation of such settlement, and the removal from it of such persons as it shall seem expedient to remove;

(*14*) and, generally, to carry out the purposes of this Act.

Penalties for breach of rules.

[2] **19.** (*1*) Any person registered under this Act violating a rule made under clause (*4*), clause (*5*) or clause (*6*) of section 18 shall be punishable with rigorous imprisonment for a term which may extend, on a first conviction, to one year, on a second conviction, to two years, and on any

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[1] *See* footnote to s. 1, *supra*.

[2] S. 19 as it now stands was enacted and substituted for the original section by section 5 of the Criminal Tribes Act Amendment Act, 1897 (II of 1897).

The original section was as follows :—

"Any person violating any of the rules made under section 18 shall be punished with rigorous imprisonment for a term which may extend to six months, or with fine, or with whipping, or with all or any two of those punishments; and on any second conviction for a breach of any of the said rules, with rigorous imprisonment which may extend to one year, or with fine, or with whipping to be inflicted in the manner prescribed by any law in force for the time being in relation to whipping, or with all or any two of these punishments.'

subsequent conviction, to three years, and shall also, whether on the first or any subsequent conviction, be liable to whipping.

(2) Any person being a member of a proclaimed tribe violating a rule made under any other clause of section 18 shall be punishable with rigorous imprisonment for a term which may extend to six months, or with fine, or with whipping, or with all or any two of those punishments; and, on any subsequent conviction for a breach of any such rule, with rigorous imprisonment for a term which may extend to one year, or with fine, or with whipping, or with all or any two of those punishments.

Enhanced punishment for certain offences by members of criminal tribe after previous conviction.

[1] **19A.** Whoever, being a member of any tribe, gang or class which has been declared criminal, and having been convicted of any of the offences under the [2] Indian Penal Code specified in the schedule to this Act, shall thereafter be convicted of the same or any other offence specified in the said schedule, then he shall, in the absence of special reasons to the contrary to be mentioned in the judgment of the Court, be punished, on such second conviction, with rigorous imprisonment for a term of not less than seven years, and on a third conviction with transportation for life.

XLV of 1860.

Nothing in this section shall affect the liability of such person to any further or other punishment to which he may be liable under the [2] Indian Penal Code or any other law.

XLV of 1860.

Punishment for members of criminal tribe found under suspicious circumstances.

[3] **19B.** Whoever, being a registered member of any tribe, gang or class which has been declared criminal, is found in any place under such circumstances as to satisfy the Court that he was about to commit, or aid in the commission of, theft or robbery, or that he was waiting for an opportunity to commit theft or robbery, shall be punishable with rigorous imprisonment for a term which may extend to three years, and shall also be liable to fine.

Arrest of registered person found beyond prescribed limits.

20. Any person registered under the provisions of this Act, who is found in any part of British India, beyond the limits so prescribed for his residence, without such pass as may be required by the said rules, or in a place or at a time not permitted by the conditions of his pass,

or who escapes from a reformatory settlement,

may be arrested without warrant by any police-officer or village-watchman, and taken before a Magistrate, who, on proof of the facts, shall order him to be removed to the district in which he ought to have resided, or to the reformatory settlement from which he has escaped (as

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[1] S. 19A was added by s. 6 of the Criminal Tribes Act Amendment Act, 1897 (II of 1897), General Acts, Vol. IV.

[2] General Acts, Vol. I.

[3] S. 19B was added by s. 6 of the Criminal Tribes Act Amendment Act, 1897 (II of 1897).

the case may be), there to be dealt with according to the rules under this Act for the time being in force.

The rules for the time being in force for the transmission of prisoners shall apply to all persons removed under this section: Provided that an order from the [1] Local Government or from the Inspector General of Prisons shall not be necessary for the removal of such persons.

Duties of village-headmen, village-watchmen, etc.

21. It shall be the duty of every village-headman and village-watchman in a village in which any persons belonging to a tribe, class or gang which has been declared criminal reside, and of every owner or occupier of land on which any such persons reside, [2] [or of the agent of any such owner or occupier], to give the earliest information in his power at the nearest police-station of—

(*1*) the failure of any such person to appear and give information, as directed in section 8;

(*2*) the departure of any such person from such village or from such land (as the case may be).

[1]And it shall be the duty of every village-headman and village-watchman in a village, and of every owner or occupier of land, [2] [or of the agent of such owner or occupier], to give the earliest information in his power at the nearest police-station of the arrival at such village or on such land (as the case may be) of any persons who may reasonably be suspected of belonging to any such tribe, class or gang.

Penalty for breach of such duties.

22. Any village-headman, village-watchman, owner or occupier of land, [2][or the agent of such owner or occupier], who shall fail to comply with the requirements of section 21, shall be deemed to have committed an offence under the first part of section 176 of the [3] Indian Penal Code. XLV of 1860.

23. [*Indemnity for past registrations and detentions.*] *Rep. Act XII of 1876, section 1, and Schedule, Part I.*

PART II.

EUNUCHS.

Registers of eunuchs and their property.

24. The [1] Local Government shall cause the following registers to be made and kept up by such officer as, from time to time, [4] appoints in this behalf:—

(*a*) a register of the names and residences of all eunuchs residing

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[1] *See* footnote to s. 1, *supra*.

[2] These words were inserted in ss. 21 and 22 by s. 2 of the Criminal Tribes (Amendment) Act, 1876 (VII of 1876).

[3] General Acts, Vol. I.

[4] For notifications appointing officers to keep these registers in the United Provinces of Agra and Oudh, *see* U. P. R. and O.

in any town or place to which the [1] Local Government specially extends this part of this Act, who are reasonably suspected of kidnapping or castrating children, or of committing offences under section 377 of the XLV of 1860. [2] Indian Penal Code, or of abetting the commission of any of the said offences; and

(*b*) a register of the property of such of the said eunuchs as, under the provisions hereinafter contained, are required to furnish information as to their property.

The term "eunuch" shall, for the purposes of this Act, be deemed to include all persons of the male sex who admit themselves, or on medical inspection clearly appear, to be impotent. "Eunuch" defined.

25. Any person deeming himself aggrieved by any entry made or proposed to be made in such register, either when the register is first made or subsequently, may complain to the said officer, who shall enter such person's name, or erase, it, or retain it, as he sees fit. Complaints of entries in register.

Every order for erasure of such person's name shall state the grounds on which such person's name is erased.

The [3] Commissioner shall have power to review any order passed by such officer on such complaint, either on appeal by the complainant or otherwise.

26. Any eunuch so registered who appears, dressed or ornamented like a woman, in a public street or place, or in any other place, with the intention of being seen from a public street or place, Penalty on registered eunuch appearing in female clothes; or dancing in public, or for hire.

or who dances or plays music, or takes part in any public exhibition, in a public street or place or for hire in a private house,

may be arrested without warrant, and shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

27. Any eunuch so registered who has in his charge, or keeps in the house in which he resides, or under his control, any boy who has not completed the age of sixteen years, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both. Penalty on registered eunuch keeping boy under sixteen.

28. The Magistrate may direct that any such boy shall be returned to his parents or guardians, if they can be discovered. If they cannot be discovered, the Magistrate may make such arrangements as he thinks necessary for the maintenance and education of such boy, and may direct that the whole or any part of a fine inflicted under section 27 may be employed in defraying the cost of such arrangements. Maintenance and education of boys whose parents cannot be found.

The [1] Local Government may direct out of what local or municipal

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[1] *See* footnote to s. 1. *supra*.
[2] General Acts, Vol. I.
[3] *See* footnote to s. 12, *supra*.

fund so much of the cost of such arrangements as is not met by the fine imposed, shall be defrayed.

Disabilities of registered eunuchs.

29. No eunuch so registered shall be capable—

(*a*) of being or acting as guardian to any minor,
(*b*) of making a gift,
(*c*) of making a will, or
(*d*) of adopting a son.

Power to require information as to registered eunuch's property. Penalty for refusing such information.

30. Any officer authorized by the [1]Local Government in this behalf may, from time to time, require any eunuch so registered to furnish information as to all property, whether movable or immovable, of or to which he is possessed or entitled, or which is held in trust for him.

Any such eunuch intentionally omitting to furnish such information, or furnishing, as true, information on the subject which he knows, or has reason to believe, to be false, shall be deemed to have committed an offence under section 176 or 177 of the [2] Indian Penal Code, as the case may be. XLV of 1860.

Rules for making and keeping up registers of eunuchs.

31. The [1] Local Government may, with the previous sanction of the Governor General in Council, make [3] rules for the making and keeping up and charge of registers made under this part of the Act.

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[4] THE SCHEDULE.

(*See section 19A.*)

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[1] *See* fifth footnote on p. 177 *supra*.
[2] General Acts, Vol. I.
[3] For rules for the United Provinces of Agra and Oudh, *see* p. 32 of List 4 of the United Provinces List of Local Rules and Orders, 1904, Vol. I, Pt. I.
[4] The schedule was added by s. 7 of the Criminal Tribes Act Amendment Act, 1897 (II of 1897).

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THE INDIAN WEIGHTS AND MEASURES OF CAPACITY ACT, 1871.

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ACT No. XXXI OF 1871.[1]

[*30th October, 1871.*]

An Act to regulate the Weights and Measures of Capacity of British India.

Preamble. WHEREAS it is expedient to provide for the ultimate adoption of a

[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1871, Pt. V, p. 398; for Proceedings in Council, *see ibid*, 1871, Supplement, pp. 1181, 1290, 1424, 1575.

uniform system of Weights and Measures of Capacity throughout British India; It is hereby enacted as follows:—

I.—Preliminary.

Short title. Local extent.

1. This Act may be called the Indian Weights and Measures of Capacity Act, 1871, and extends to the whole of British India.

II.—Standards.

Standard of weight.

2. The primary standard of weight shall be called a ser, and shall be a weight of metal in the possession of the Government of India, equal, when weighed in a vacuum, to the weight known in France as the Kilogramme de Archives.

Units of weights and measures of capacity.

3. The units for weight and of measures of capacity shall be—

for weights, the said ser;

for measures of capacity, a measure containing one such ser of water at its maximum density weighed in a vacuum.

Special weights and measures of capacity may be authorized.

4. The Governor General in Council may, from time to time, by notification in the Gazette of India,[1] declare the magnitude and denominations of the weights and measures of capacity, other than the said units, to be authorized under this Act:

Provided that every such weight or measure of capacity shall be an integral multiple or integral sub-multiple of one of the units aforesaid.

The Governor General in Council may, in like manner, revoke such notification.

Unless it be otherwise ordered in any such notification, the subdivision of all such weights and measures of capacity shall be expressed in decimal parts.

Districts how defined.

5. The Governor General in Council may, from time to time, by notification in the Gazette of India, define the limits of districts for the purposes of this Act.

Sub-districts how defined.

The Local Government may, from time to time, by notification in the official Gazette, define the limits of sub-districts for the purposes of this Act.

Primary standards to be provided.

6. The Governor General in Council may provide, for such districts as he thinks fit, proper primary standards and sets of the said authorized weights and measures of capacity.

Such standards shall, for the purposes of this Act, be deemed the standards for such districts.

[1] No notifications have as yet been issued under this or any other section of this Act.

Local standards to be provided.

7. The Local Government may provide, for such sub-districts as it thinks fit, copies of such of the said authorized weights and measures of capacity as shall be necessary to serve as local standards in such sub-districts.

Such local standards shall be deemed correct, until they are proved to be otherwise.

III.—Use of new Weights and Measures of Capacity.

Use of new weights and measures of capacity in Government offices, etc.

8. Whenever the Governor General in Council considers that proper standard weights and measures of capacity have been made available for the verification of the weights and measures of capacity to be used by any Government office or municipal body or railway company, the Governor General in Council may, by notification in the Gazette of India, direct that, after a date to be fixed therein, all or any of the weights and measures of capacity authorized as aforesaid shall be used in dealings and contracts by such office, body or company; and may, in like manner, from time to time, alter or revoke such direction.

Contracts by weight or measure of capacity.

9. After the date fixed in any notification under section 8, all dealings and contracts had and made by the officers, bodies or companies, mentioned in such notification, for any work to be done or goods to be sold or delivered by weight or measure of capacity, shall, in the absence of a special agreement to the contrary, be deemed to be had and made according to the weights or measures of capacity directed in such notification to be used by such officers, bodies or companies.

IV.—Wardens.

Appointment of wardens.

10. The Governor General in Council and the Local Government, respectively, shall appoint Wardens for the custody of the primary and local standard and sets of authorized weights and measures of capacity hereinbefore mentioned.

The Governor General in Council, or the Local Government, respectively, may, at any time, suspend or remove any such Warden and appoint another.

Power to make rules.

11. The Governor General in Council may, from time to time, make rules consistent with this Act for regulating the following matters:—

(*a*) the appointment of Wardens;

(*b*) the guidance of Wardens in all matters connected with the performance of their duties;

(*c*) the provision, replacement, custody and use of the standards;

(*d*) the method of verifying local standards and weights, weighing machines and measures of capacity authorized under this Act, and balances, and of certifying such verification:

Provided that such verification shall not be required to be made oftener than once in two years;

(*e*) the errors which may be tolerated in weights, weighing machines and measures of capacity authorized under this Act, and in balances;

(*f*) the shapes, proportions and dimensions to be given to weights, weighing machines and measures of capacity authorized under this Act, and to balances, and the materials of which they may be made;

(*g*) marking weights and measures of capacity authorized under this Act with their several denominations;

(*h*) the conditions under which Government offices, municipal bodies and railway companies shall be subject to inspection and verification of the weights, weighing machines and measures of capacity authorized under this Act, and of the balances used by them;

(*i*) the fees to be paid for verifying, correcting and certifying the verification of weights, weighing machines and measures of capacity authorized under this Act, and of balances.

12. Such rules shall be published in the Gazette of India.

Publication of rules. Rules, when specially applied, to have force of law.

And the Governor General in Council may, by notification in the Gazette of India, declare that, from and after a day to be named therein, all or any of the said rules shall come into force in respect of any Government office, municipal body or railway company: and thereupon, to the extent specified in such notification, such rules or rule shall have the force of law.

Officers of Government and others to comply with rules.

13. All officers of Government, municipal officers, and officers and servants of railway companies shall comply with such rules so far as they concern them, and pay such fees as the said rules shall prescribe.

Warden may refuse to verify or correct things unfit.

14. The Warden may deface, or render incapable of use, or refuse to verify, correct or mark, anything brought to him for verification or correction, which appears to him unfit for verification or correction.

Exercise of any of Warden's powers.

15. Any of the powers and duties conferred and imposed by this Act on a Warden may be exercised and performed by any other officer whom the Local Government may, from time to time, appoint.

Counterfeiting Warden's marks.

16. Whoever knowingly counterfeits any mark used by a Warden under section 11 shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Tables of equivalents.

17. The Local Government may, from time to time, prepare tables of the equivalents of weights and measures of capacity, other than those authorized under this Act, in terms of the weights and measures of capacity so authorized, and the equivalents so stated, after notification in the local official Gazette, shall be deemed the true equivalents.

THE INDIAN EVIDENCE ACT, 1872.

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ACT No. I OF 1872.

[*15th March, 1872.*]

The Indian Evidence Act, 1872.[1]

Preamble. WHEREAS it is expedient to consolidate, define and amend the law of Evidence; It is hereby enacted as follows:—

PART I.

RELEVANCY OF FACTS.

CHAPTER I.

PRELIMINARY.

Short title. **1.** This Act may be called the Indian Evidence Act, 1872.

Extent. It extends to the whole of British India,[2] and applies to all judicial proceedings in or before any Court, including Courts-martial,[3] but not

[1] For Statement of Objects and Reasons, *see* Gazette of India, 1868, p. 1574; for the draft or preliminary Report of the Select Committee, dated 31st March, 1871 *see ibid*, 1871, Pt. V, p. 273, and for the second Report of the Select Committee, dated 30th January, 1872, *see ibid*, 1872, Pt. V, p. 34; for discussions in Council, *see ibid*, 1868, Supplement, pp. 1060 and 1209, *ibid*, 1871, Extra Supplement, p. 42, and Supplement, p. 1641, and *ibid*, 1872, pp. 136 and 230.

[2] Act I of 1872 has been declared in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (XIII of 1898)—*see* the First Schedule, Bur. Code; in the Hill District of Arakan, by the Arakan Hill District Laws Regulation, 1874 (IX of 1874), s. 3, printed *ibid;* in British Baluchistan, by the British Baluchistan Laws Regulation, 1890 (I of 1890), s. 3, Bal. Code; in the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation (III of 1872) as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (III of 1899), s. 3, Ben. Code; in the Angul District, by the Angul District Regulation, 1894 (I of 1894), s. 3, *ibid;* in the Chittagong Hill-tracts, by the Chittagong Hill-tracts Regulation, 1900 (1 of 1900), *ibid*; in the Kachin Hill-tracts, as regards Hill-tribes, by the Kachin Hill Districts Regulation, 1895 (I of 1895), s. 3; *see* the revised edition as modified up to 1st April, 1902; and in the Chin Hills, as regards Hill-tribes, by the Chin Hills Regulation, 1896 (V of 1896), s. 3, Bur. Code; also [by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874)], in the following Scheduled Districts, namely, the Districts of Hazaribagh, Lohardaga (now the Ranchi District—*see* Calcutta Gazette, 1899, Pt. I, p. 44), and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum—*see* Gazette of India, 1881, Pt. I, p. 504 [the Lohardaga or Ranchi District included at this time the Palamau District, separated in 1894]; and the Tarai of the Province of Agra, *ibid*, 1876, Pt. I, p. 505; Ganjam and Vizagapatam—*see* Gazette of India, 1899, Pt. I, p. 730; and under ss. 3 and 5A of the same Act it has been declared in force in the Pargana of Manpur—*see* Gazette of India, 1899, Pt. II, p. 419. The powers of a Local Government and those of a High Court were at the same time conferred on the Agent, Governor General, Central India, for the purposes of this Act.

[3] But see the Army Act (44 & 45 Vict., c. 58), s. 127, which is as follows :—

"A Court-martial under this Act shall not, as respects the conduct of its proceedings, or the reception or rejection of evidence, or as respects any other matter or thing whatsoever, be subject to the provisions of the Indian Evidence Act, 1872, or to any Act, law or ordinance of any Legislature whatsoever, other than the Parliament of the United Kingdom."

Act I of 1872 is (subject to such modifications as the Governor General in Council may direct) applicable to all proceedings before Indian Marine Courts—*see* Act XIV of 1887, s. 68, General Acts, Vol. IV.

to affidavits [1] presented to any Court or officer, nor to proceedings before an arbitrator;

and it shall come into force on the first day of September, 1872. Commencement of Act.

2. On and from that day the following laws shall be repealed:— Repeal of enactments.

(1) all rules of evidence not contained in any Statute, Act or Regulation in force in any part of British India;

(2) all such rules, laws and regulations as have acquired the force of law under the 25th section of the Indian Councils Act, 1861,[2] in so far as they relate to any matter herein provided for; and 24 & 25 Vict., c. 67.

(3) the enactments mentioned in the schedule hereto to the extent specified in the third column of the said schedule.

But nothing herein contained shall be deemed to affect any provision of any Statute, Act or Regulation in force in any part of British India and not hereby expressly repealed.

3. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:— Interpretation-clause.

"Court" includes all Judges [3] and Magistrates,[4] and all persons, except arbitrators, legally authorized to take evidence. "Court."

"Fact" means and includes— "Fact."

(1) any thing, state of things, or relation of things capable of being perceived by the senses;

(2) any mental condition of which any person is conscious.

Illustrations.

(*a*) That there are certain objects arranged in a certain order in a certain place, is a fact.

(*b*) That a man heard or saw something, is a fact.

(*c*) That a man said certain words, is a fact.

(*d*) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(*e*) That a man has a certain reputation, is a fact.

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts. "Relevant."

[1] As to practice relating to affidavits, *see* the Code of Civil Procedure, 1908, s. 30 (*c*) and Sch. I, Order XIX, General Acts, Vol. VI; *see* also the Code of Criminal Procedure, 1898 (Act V of 1898), General Acts, Vol. V.

[2] Coll. Stat. Vol. I.

[3] *Cf.* the Code of Civil Procedure, 1908 (Act V of 1908), s. 2, General Acts, Vol. VI, the Indian Penal Code (Act XLV of 1860), s. 19, General Acts, Vol. I, and, for a definition of "District Judge," the General Clauses Act, 1897 (X of 1897), s. 3 (*15*), General Acts, Vol. IV.

[4] *Cf.* the General Clauses Act, 1897 (X of 1897), s. 3 (*31*), and Code of Criminal Procedure, 1898 (V of 1898).

"Facts in issue." The expression "facts in issue" means and includes—

any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation.—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure,[1] any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.

Illustrations.

A is accused of the murder of B.
At his trial the following facts may be in issue :—
that A caused B's death;
that A intended to cause B's death;
that A had received grave and sudden provocation from B;
that A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

"Document." "Document"[2] means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustrations.

A writing [3] is a document :
[3] Words printed, lithographed or photographed are documents :
A map or plan is a document :
An inscription on a metal plate or stone is a document :
A caricature is a document.

"Evidence." "Evidence" means and includes—

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry:

such statements are called oral evidence;

(2) all documents produced for the inspection of the Court;

such documents are called documentary evidence.

"Proved." A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

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[1] *See* now Act V of 1908, General Acts, Vol. VI.
With reference to the settlement of issues, *see* the Code of Civil Procedure, 1908 (Act V of 1908), Sch. I, Order XIV.

[2] *Cf.* s. 29 of the Indian Penal Code (Act XLV of 1860), General Acts, Vol. I, and s. 3 (*16*) of the General Clauses Act, 1897 (X of 1897), General Acts, Vol. IV.

[4] *Cf.* definition of "writing" in s. 3 (*58*) of the General Clauses Act, 1897 (X of 1897), General Acts, Vol. IV.

A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. "Disproved."

A fact is said not to be proved when it is neither proved nor disproved. "Not proved."

4. Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it: "May presume."

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved: "Shall presume."

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it. "Conclusive proof."

CHAPTER II.

OF THE RELEVANCY OF FACTS.

5. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others. Evidence may be given of facts in issue and relevant facts.

Explanation.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.[1]

Illustrations.

(*a*) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue :—

A's beating B with the club;
A's causing B's death by such beating;
A's intention to cause B's death.

(*b*) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.[1]

6. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places. Relevancy of facts forming part of same transaction.

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[1] *See* now Act V of 1908, General Acts, Vol. VI.

Illustrations.

(*a*) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(*b*) A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked, and gaols are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(*c*) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(*d*) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

Facts which are the occasion, cause or effect of facts in issue.

7. Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Illustrations.

(*a*) The question is, whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it or mentioned the fact that he had it, to third persons, are relevant.

(*b*) The question is, whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(*c*) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Motive, preparation and previous or subsequent conduct.

8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations.

(*a*) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(*b*) A sues B upon a bond for the payment of money. B denies the making of the bond.
The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(*c*) A is tried for the murder of B by poison.
The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(*d*) The question is whether a certain document is the will of A.
The facts, that not long before the date of the alleged will A made inquiry into matters to which the provisions of the alleged will relate, that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared of which he did not approve, are relevant.

(*e*) A is accused of a crime.
The facts that, either before or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(*f*) The question is, whether A robbed B.
The facts that, after B was robbed, C said in A's presence—"the police are coming to look for the man who robbed B," and that immediately afterwards A ran away, are relevant.

(*g*) The question is whether A owes B rupees 10,000.
The facts that A asked C to lend him money, and that D said to C in A's presence and hearing—"I advise you not to trust A, for he owes B 10,000 rupees," and that A went away without making any answer, are relevant facts.

(*h*) The question is, whether A committed a crime.
The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(*i*) A is accused of a crime.
The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(*j*) The question is whether A was ravished.
The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant as a dying declaration under section 32, clause (*1*), or as corroborative evidence under section 157.

(*k*) The question is, whether A was robbed.
The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that he said he had been robbed without making any complaint, is not relevant, as conduct under this section, though it may be relevant as a dying declaration under section 32, clause (*1*), or as corroborative evidence under section 157.

Facts necessary to explain or introduce relevant facts.

9. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which established the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations.

(*a*) The question is, whether a given document is the will of A.
The state of A's property and of his family at the date of the alleged will may be relevant facts.

(*b*) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(*c*) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his house, is relevant under section 8, as conduct subsequent to and affected by facts in issue.

The fact that at the time when he left home he had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(*d*) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A—"I am leaving you because B has made me a better offer." This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(*e*) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says as he delivers it—"A says your are to hide this." B's statement is relevant as explanatory of a fact which is part of the transaction.

(*f*) A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

Things said or done by conspirator in reference to common design.

10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration.

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

When facts not otherwise relevant become relevant.

11. Facts not otherwise relevant are relevant—

(1) if they are inconsistent with any fact in issue or relevant fact;

(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustrations.

(*a*) The question is whether A committed a crime at Calcutta on a certain day. The fact that, on that day, A was at Lahore is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(*b*) The question is, whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C or D. Every fact which shows that the crime could have been committed by no one else and that it was not committed by either B, C or D, is relevant.

In suits for damages, facts tending to enable Court to determine amount, are relevant.

12. In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded, is relevant.

Facts relevant when right or custom is in question.

13. Where the question is as to the existence of any right or custom, the following facts are relevant:—

(*a*) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence:

(*b*) particular instances in which the right or custom was claimed, recognized or exercised, or in which its exercise was disputed, asserted or departed from.

Illustration.

The question is whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

Facts showing existence of state of mind, or of body, or bodily feeling.

14. Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

[1] *Explanation 1.*—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.

[1] *Explanation 2.*—But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.[2]

Illustrations.

(*a*) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

[1] These *explanations* were substituted for the original *explanation* to s. 14, by the Indian Evidence Act (1872) Amendment Act, 1891 (III of 1891), s. 1 (*1*), Genl. Acts, Vol. IV.

[2] *See* the Code of Criminal Procedure, 1898 (Act V of 1898), s. 311, General Acts, Vol. V.

The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

[1] (*b*) A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin is relevant.

The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit is relevant.

(*c*) A sues B for damage done by a dog of B's, which B knew to be ferocious.

The facts that the dog had previously bitten X, Y and Z, and that they had made complaints to B, are relevant.

(*d*) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant as showing that A knew that the payee was a fictitious person.

(*e*) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(*f*) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss.

The fact that at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(*g*) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor.

A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(*h*) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(*i*) A is charged with shooting at B with intent to kill him. In order to show A's intent the fact of A's having previously shot at B may be proved.

(*j*) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(*k*) The question is, whether A has been guilty of cruelty towards B, his wife.

Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts.

(*l*) The question is whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms are relevant facts.

(*m*) The question is, what was the state of A's health at the time an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question are relevant facts.

(*n*) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

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[1] This *illustration* was substituted for the original *illustration* (*b*) to s. 14 by Act III of 1891, s. 1 (*2*), General Acts, Vol. IV.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage is relevant.

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant.

(*o*) A is tried for the murder of B by intentionally shooting him dead.

The fact that A on other occasions shot at B is relevant as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them is irrelevant.

(*p*) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

Facts bearing on question, whether act was accidental or intentional.

15. When there is a question whether an act was accidental or intentional, [1][or done with a particular knowledge or intention], the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Illustrations.

(*a*) A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

(*b*) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is, whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(*c*) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E are relevant, as showing that the delivery to B was not accidental.

Existence of course of business when relevant.

16. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Illustrations.

(*a*) The question is, whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

(*b*) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

ADMISSIONS.

Admission defined.

17. An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

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[1] These words in s. 15 were inserted by the Indian Evidence Act (1872) Amendment Act, 1891 (III of 1891), s. 2, General Acts, Vol. IV.

Admission by party to proceeding or his agent;

by suitor in representative character;

by party interested in subject-matter;

by person from whom interest derived.

18. Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

Statements made by parties to suits suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.

Statements made by—

(1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or

(2) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,

are admissions, if they are made during the continuance of the interest of the persons making the statements.

Admissions by persons whose position must be proved as against party to suit.

19. Statements made by persons whose position or liability it is necessary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Illustrations.

A undertakes to collect rents for B.
B sues A for not collecting rent due from C to B.
A denies that rent was due from C to B.
A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

Admissions by persons expressly referred to by party to suit.

20. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustration.

The question is whether a horse sold by A to B is sound.
A says to B—"Go and ask C; C knows all about it." C's statement is an admission.

Proof of admissions against persons making them, and by or on their behalf.

21. Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases:—

(*1*) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.

(*2*) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of

mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Illustrations.

(*a*) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(*b*) A, the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under section 32, clause (2).

(*c*) A is accused of a crime committed by him at Calcutta.

He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section 32, clause (2).

(*d*) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(*e*) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin as he doubted whether it was counterfeit or not, and that that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding *illustration*.

When oral admissions as to contents of documents are relevant.

22. Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

Admissions in civil cases when relevant.

23. In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Explanation.—Nothing in this section shall be taken to exempt any barrister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

Confession caused by inducement, threat or promise,

24. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise [1] having re-

[1] For prohibition of such inducements, etc., *see* s. 343 of the Code of Criminal Procedure, 1898 (Act V of 1898), General Acts, Vol. V.

when irrelevant in criminal proceeding.

ference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Confession to police officer not to be proved.

25. No confession made to a police-officer [1] shall be proved as against a person accused of any offence.

Confession by accused while in custody of police not to be proved against him.

26. No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate,[2] shall be proved as against such person.

[3]*Explanation.*—In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or in Burma or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882.[4] X of 1882.

How much of information received from accused may be proved.

27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Confession made after removal of impression caused by inducement, threat or promise, relevant.

28. If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc.

29. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

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[1] In Upper Burma insert "who is a Magistrate," *see* s. 4 (*3*) (*c*) of the Burma Laws Act, 1898 (XIII of 1898), Bur. Code. As to statements made to a police-officer investigating a case, *see* the Code of Criminal Procedure, 1898 (Act V of 1898), General Acts, Vol. V.

[2] A Coroner has been declared to be a Magistrate for the purposes of this section, *see* s. 20 of the Coroners Act, 1871 (IV of 1871), Bom. Code, Ben. Code.

[3] This *explanation* was added to s. 26 by the Indian Evidence Act (1872) Amendment Act, 1891 (III of 1891), s. 3, General Acts, Vol. IV.

[4] *See* now the Code of Criminal Procedure, 1898 (Act V of 1898), General Acts, Vol. V.

Consideration of proved confession affecting person making it and others jointly under trial for same offence.

30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

[1]*Explanation.*—"Offence," as used in this section, includes the abetment of, or attempt to commit, the offence.[2]

Illustrations.

(*a*) A and B are jointly tried for the murder of C. It is proved that A said—"B and I murdered C." The Court may consider the effect of this confession as against B.

(*b*) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said—"A and I murdered C."

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

Admissions not conclusive proof, but may estop.

31. Admissions are not conclusive proof of the matters admitted but they may operate as estoppels under the provisions hereinafter contained.

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES.

Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. When it relates to cause of death;

32. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:—

(*1*) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

or is made in course of business;

(*2*) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or

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[1] This *explanation* was inserted in s. 30 by the Indian Evidence Act (1872) Amendment Act, 1891 (III of 1891), s. 4, General Acts, Vol. IV.

[2] *Cf. Explanation* 4 to s. 108 of the Indian Penal Code (Act XLV of 1860), General Acts, Vol. I.

property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.

or against interest of maker;

(*3*) When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

or gives opinion as to public right or custom, or matters of general interest;

(*4*) When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter has arisen.

or relates to existence of relationship;

(*5*) When the statement relates to the existence of any relationship [1][by blood, marriage or adoption] between persons as to whose relationship [1][by blood, marriage or adoption] the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

or is made in will or deed relating to family affairs

(*6*) When the statement relates to the existence of any relationship [1][by blood, marriage or adoption] between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

or in document relating to transaction mentioned in section 13, clause (*a*);

(*7*) When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section 13, clause (*a*).

or is made by several persons and expresses feelings relevant to matter in question.

(*8*) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations.

(*a*) The question is, whether A was murdered by B; or

A dies of injuries received in a transaction in the course of which she was ravished. The question is whether she was ravished by B; or

The question is whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration are relevant facts.

(*b*) The question is as to the date of A's birth.

An entry in the diary of a deceased surgeon regularly kept in the course of business, stating that, on a given day he attended A's mother and delivered her of a son, is a relevant fact.

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[1] These words in s. 32, cls. (*5*) and (*6*), were inserted by the Indian Evidence Act Amendment Act (XVIII of 1872), s. 2, *infra*.

(*c*) The question is, whether A was in Calcutta on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that on a given day the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(*d*) The question is, whether a ship sailed from Bombay harbour on a given day.

A letter written by a deceased member of a merchant's firm by which she was chartered to their correspondents in London, to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(*e*) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to A saying that he had received the rent on A's account and held it at A's orders, is a revelant fact.

(*f*) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

(*g*) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day is relevant.

(*h*) The question is, what was the cause of the wreck of a ship.

A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.

(*i*) The question is, whether a given road is a public way.

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(*j*) The question is, what was the price of grain on a certain day in a particular market.

A statement of the price, made by a deceased banya in the ordinary course of his business, is a relevant fact.

(*k*) The question is, whether A, who is dead, was the father of B.

A statement by A that B was his son, is a relevant fact.

(*l*) The question is, what was the date of the birth of A.

A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(*m*) The question is, whether, and when, A and B were married.

An entry in a memorandum-book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(*n*) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated

33. Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:

Provided—

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES.

Entries in books of account when relevant.

34. [1]Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration.

A sues B for ₹1,000, and shows entries in his account books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

Relevancy of entry in public record made in performance of duty.

35. An entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact.

Relevancy of statements in maps, charts and plans.

36. Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

Relevancy of statement as to fact of public nature contained in certain Acts or notifications.

37. When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament, or in any Act of the Governor General of India in Council, or of the Governors in Council of Madras or Bombay, or of the Lieutenant-Governor in Council of Bengal, or in a notification of the Government appearing in the Gazette of India, or in the Gazette of any Local Government, or in any printed paper purporting to be the London Gazette or the Government Gazette of any colony or possession of the Queen, is a relevant fact.

[2] This section applies also to any Act of the Lieutenant-Governor in Council of the North-Western Provinces and Oudh, the Punjab or Burma.

Relevancy of statements

38. When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be

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[1] *Cf.* s. 198 of the Indian Companies Act, 1882 (VI of 1882), General Acts, Vol. III, and Sch. I, Order VII, rule 17 of the Code of Civil Procedure, 1908 (Act V of 1908), General Acts, Vol. VI; as to admissibility in evidence of certified copies of entries in Bankers' books, *see* s. 4 of the Bankers' Books Evidence Act, 1891 (XVIII of 1891), General Acts, Vol. IV.

[2] This paragraph was added by s. 2 of the Indian Evidence Act, 1899 (V of 1899), General Acts, Vol. V.

The reference to the Lieutenant-Governor in Council of the North-Western Provinces and Oudh should now be construed as referring to the Lieutenant-Governor of the United Provinces of Agra and Oudh in Council; *see* the United Provinces (Designation) Act, 1902 (VII of 1902), *ibid.*

printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

as to any law contained in law-books.

How much of a Statement is to be proved.

39. When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

What evidence to be given when statement forms part of a conversation, document, book or series of letters or papers.

Judgments of Courts of Justice when relevant.

40. The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial.

Previous judgments relevant to bar a second suit or trial.

41. A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Relevancy of certain judgments in probate, etc., jurisdiction.

Such judgment, order or decree is conclusive proof—

that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, [1][order or decree] declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, [1][order or decree] declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, [1][order or decree] declares that it had been or should be his property.

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[1] These words in s. 41 wherever they occur were inserted by the Indian Evidence Act Amendment Act (XVIII of 1872), s. 3, *infra*.

Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41.

42. Judgments, orders or decrees other than those mentioned in section 41 are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

Illustration.

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

Judgments, etc., other than those mentioned in sections 40 to 42, when relevant.

43. Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provision of this Act.

Illustrations.

(*a*) A and B separately sue C for a libel which reflects upon each of them. C in each case says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(*b*) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(*c*) A prosecutes B for stealing a cow from him. B is convicted.

A afterwards sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(*d*) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

[1] (*e*) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

[1] (*f*) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under section 8 as showing the motive for the fact in issue.

Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.

44. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 40, 41 or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

OPINIONS OF THIRD PERSONS, WHEN RELEVANT.

Opinions of experts.

45. When the Court has to form an opinion upon a point of foreign

[1] These *illustrations* were added to s. 43 by the Indian Evidence Act (1872) Amendment Act, 1891 (III of 1891), s. 5, General Acts, Vol. IV.

law, or of science, or art, or as to identity of handwriting [1][or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, [2][or in questions as to identity of handwriting] [1][or finger impressions] are relevant facts.

Such persons are called experts.

Illustrations.

(*a*) The question is, whether the death of A was caused by poison.

The opinion of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(*b*) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(*c*) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.

Facts bearing upon opinions of experts.

46. Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Illustrations.

(*a*) The question is, whether A was poisoned by a certain poison.

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(*b*) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

Opinion as to handwriting when relevant.

47. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

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[1] The words " or finger impressions," in both places where they occur in s. 45, were added by the Indian Evidence Act, 1899 (V of 1899), General Acts, Vol. V. For discussion in Council as to whether " finger impressions " include " thumb impressions," *see* Gazette of India, 1898, Pt. VI, p. 24.

[2] These words in s. 45 were inserted by the Indian Evidence Act Amendment Act (XVIII of 1872), s. 4, General Acts, Vol. II.

Illustration.

The question is, whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to A and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

The opinions of B, C and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C nor D ever saw A write.

Opinion as to existence of right or custom, when relevant.

48. When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

Explanation.—The expression "general custom or right" includes customs or rights common to any considerable class of persons.

Illustration.

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

Opinion as to usages, tenets, etc., when relevant.

49. When the Court has to form an opinion as to—

the usages and tenets of any body of men or family,

the constitution and government of any religious or charitable foundation, or

the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon, are relevant facts.

Opinion on relationship when relevant.

50. When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act,[1] or in prosecutions under section 494, 495, 497 or 498 of the Indian Penal Code.[2] IV of 1869. XLV of 1860.

Illustrations.

(*a*) The question is, whether A and B were married.

The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(*b*) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant.

Grounds of opinion when relevant.

51. Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

[1] *Supra.*

[2] General Acts, Vol. I.

Illustration.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

CHARACTER WHEN RELEVANT.

52. In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant. In civil cases character to prove conduct imputed irrelevant.

53. In criminal proceedings the fact that the person accused is of a good character is relevant. In criminal cases previous good character relevant.

[1] **54.** In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant. Previous bad character not relevant, except in reply.

Explanation 1.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2.—A previous conviction is relevant as evidence of bad character.

55. In civil cases the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant. Character as affecting damages.

Explanation.—In sections 52, 53, 54 and 55, the word "character" includes both reputation and disposition; but, [2][except as provided in section 54,] evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

PART II.

ON PROOF.

CHAPTER III.

FACTS WHICH NEED NOT BE PROVED.

56. No fact of which the Court will take judicial notice need be proved. Fact judicially noticeable need not be proved.

[1] This section was substituted for the original section 54 by the Indian Evidence Act (1872) Amendment Act, 1891 (III of 1891), s. 6, General Acts, Vol. IV.

[2] These words and figures in the *explanation* to section 55 were inserted by the Indian Evidence Act (1872) Amendment Act, 1891 (III of 1891), s. 7, General Acts, Vol. IV.

Facts of which Court must take judicial notice.

57. The Court shall take judicial notice of the following facts:—

(*1*) all laws or rules having the force of law now or heretofore in force, or hereafter to be in force, in any part of British India:

(*2*) all public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed:

(*3*) Articles of War for Her Majesty's Army or Navy:

(*4*) the course of proceeding of Parliament and of the Councils for the purposes of making Laws and Regulations established under the Indian Councils Act,[1] or any other law for the time being relating thereto. 24 & 25 Vict, c. 67.

Explanation.—The word "Parliament" in clauses (*2*) and (*4*) includes—

(1) the Parliament of the United Kingdom of Great Britain and Ireland;
(2) the Parliament of Great Britain;
(3) the Parliament of England;
(4) the Parliament of Scotland; and
(5) the Parliament of Ireland:

(*5*) the accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland:

(*6*) all seals of which English Courts take judicial notice: the seals of all the Courts of British India, and of all Courts out of British India, established by the authority of the Governor General[2] or any Local Government in Council: the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India:

(*7*) the accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any part of British India, if the fact of their appointment to such office is notified in the Gazette of India or in the official Gazette of any Local Government:

(*8*) the existence, title and national flag of every State or Sovereign recognized by the British Crown:

(*9*) the divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the official Gazette:

(*10*) the territories under the dominion of the British Crown:

(*11*) the commencement, continuance and termination of hostilities between the British Crown and any other State or body of persons:

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[1] Coll. Stat., Vol. I.

[2] For lists of such Courts, *see* the notifications printed on pp. 372 to 374 of the Western India Volume of Macpherson's Lists of British Enactments in force in Native States.

(*12*) the names of the members and officers of the Court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders and other persons authorized by law to appear or act before it:

(*13*) the rule of the road [1][on land or at sea]. In all these cases[2] and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

Facts admitted need not be proved.

58. No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

CHAPTER IV.

Of Oral Evidence.

Proof of facts by oral evidence.

59. All facts, except the contents of documents, may be proved by oral evidence.

Oral evidence must be direct.

60. Oral evidence must, in all cases whatever, be direct; that is to say—

if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

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[1] These words in section 57, para. (*13*), were inserted by the Indian Evidence Act Amendment Act (XVIII of 1872), s. 5, *infra*.

[2] For an additional case, see the Code of Civil Procedure, 1908 (Act V of 1908), s. 84 (2), General Acts, Vol. VI.

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

CHAPTER V.

OF DOCUMENTARY EVIDENCE.

Proof of contents of documents.

61. The contents of documents may be proved either by primary or by secondary evidence.

Primary evidence.

62. Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 3.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence.

63. Secondary evidence means and includes—

(1) certified copies given under the provisions hereinafter contained;[1]

(2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3) copies made from or compared with the original;

[1] *See* s. 76, *infra*.

(4) counterparts of documents as against the parties who did not execute them;

(5) oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations.

(*a*) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(*b*) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(*c*) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(*d*) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Proof of documents by primary evidence.

64. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given.

65. Secondary evidence may be given of the existence, condition or contents of a document in the following cases:—

(*a*) when the original is shown or appears to be in the possession or power—

of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or

of any person legally bound to produce it,

and when, after the notice mentioned in section 66, such person does not produce it;

(*b*) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(*c*) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(*d*) when the original is of such a nature as not to be easily moveable;

(*e*) when the original is a public document within the meaning of section 74;

(*f*) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence;[1]

[1] *Cf.* the Bankers' Books Evidence Act, 1891 (XVIII of 1891), s. 4, General Acts, Vol. IV.

(*g*) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (*a*), (*c*) and (*d*), any secondary evidence of the contents of the document is admissible.

In case (*b*), the written admission is admissible.

In case (*e*) or (*f*), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (*g*), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

Rules as to notice to produce.

66. Secondary evidence of the contents of the documents referred to in section 65, clause (*a*), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, [1][or to his attorney or pleader,] such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:—

(1) when the document to be proved is itself a notice;

(2) when, from the nature of the case, the adverse party must know that he will be required to produce it;

(3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

(4) when the adverse party or his agent has the original in Court;

(5) when the adverse party or his agent has admitted the loss of the document;

(6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.

Proof of signature and handwriting of person alleged to have signed or written document produced.

67. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

Proof of execution of document

68. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness

[1] These words in section 66 were inserted by the Indian Evidence Act Amendment Act (XVIII of 1872), s. 6, *infra*.

alive, and subject to the process of the Court and capable of giving evidence. required by law to be attested.

69. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person. Proof where no attesting witness found.

70. The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested. Admission of execution by party to attested document.

71. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence. Proof when attesting witness denies the execution.

72. An attested document not required by law to be attested may be proved as if it was unattested. Proof of document not required by law to be attested.

73. In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose. Comparison of signature, writing or seal with others admitted or proved.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

[1][This section applies also, with any necessary modifications, to finger-impressions.]

PUBLIC DOCUMENTS.

74. The following documents are public documents:— Public documents.

(1) documents forming the acts or records of the acts—

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, whether of British India, or of any other part of Her Majesty's dominions, or of a foreign country;

(2) public records kept in British India of private documents.

75. All other documents are private. Private documents.

[1] This paragraph was added to s. 73 by the Indian Evidence Act, 1899 (V of 1899), General Act, Vol. V.

Certified copies of public documents.

76. [1] Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

Explanation.—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

Proof of documents by production of certified copies.

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of other official documents.

78. The following public documents may be proved as follows:—

(1) Acts, orders or notifications of the Executive Government of British India in any of its departments, or of any Local Government or any department of any Local Government,—

by the records of the departments, certified by the heads of those departments respectively,

or by any document purporting to be printed by order of any such Government;

(2) the proceedings of the Legislatures,—

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government:

(3) proclamations, orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government,—

by copies or extracts contained in the London Gazette, or purporting to be printed by the Queen's Printer:

(4) the Acts of the Executive or the proceedings of the Legislature of a foreign country,—by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Governor General of India in Council:

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[1] A village-officer in the Punjab has been declared for the purposes of this Act to be a public officer having the custody of a public document—*see* the Punjab Land-revenue Act, 1887 (XVII of 1887), s. 151 (2), P. and N. W. Code.

As to patwaris in the Central Provinces, *see* s. 146 of the Central Provinces Land-revenue Act, 1881 (XVIII of 1881), C. P. Code.

(5) the proceedings of a municipal body in British India,—
by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body:

(6) public documents of any other class in a foreign country,—
by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a notary public, or of a British Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

PRESUMPTIONS AS TO DOCUMENTS.

Presumption as to genuineness of certified copies.

79. The Court shall presume every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in British India, or by any officer in any Native State in alliance with Her Majesty, who is duly authorized thereto by the Governor General in Council, to be genuine:

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

Presumption as to documents produced as record of evidence.

80. Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—

that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents.

81. The Court shall presume the genuineness of every document purporting to be the London Gazette or the Gazette of India, or the Government Gazette of any Local Government, or of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept

substantially in the form required by law and is produced from proper custody.

Presumption as to document admissible in England without proof of seal or signature.

82. When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England and Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims,

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

Presumption as to maps or plans made by authority of Government.

83. The Court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

Presumption as to collections of laws and reports of decisions.

84. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country,

and of every book purporting to contain reports of decisions of the Courts of such country.

Presumption as to powers-of-attorney.

85. The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a notary public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty, or of the Government of India, was so executed and authenticated.

Presumption as to certified copies of foreign judicial records.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government of India [1][in or for] such country to be the manner commonly in use in that country for the certification of copies of judicial records.

[2][An officer who, with respect to any territory or place not forming part of Her Majesty's dominions, is a Political Agent therefor, as

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[1] These words in s. 86 were substituted for the words "resident in" by the Indian Evidence Act (1872) Amendment Act, 1891 (III of 1891), s. 8, General Acts, Vol. IV.

[2] This paragraph was added to s. 86 by s. 4 of the Indian Evidence Act, 1899 (V of 1899), in substitution for the paragraph added by s. 8 of the Indian Evidence Act (1872) Amendment Act, 1891 (III of 1891). *See* General Acts, Vol. V.

X of 1897. defined in section 3, clause (40), of the General Clauses Act, 1897,[1] shall for the purposes of this section, be deemed to be a representative of the Government of India in and for the country comprising that territory or place.]

Presumption as to books, maps and charts.

87. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts and which is produced for its inspection, was written and published by the person and at the time and place, by whom or at which it purports to have been written or published.

Presumption as to telegraphic messages.

88. The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

Presumption as to due execution, etc., of documents not produced.

89. The Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.

Presumption as to documents thirty years old.

90. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

Illustrations.

(*a*) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land, showing his titles to it. The custody is proper.

(*b*) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(*c*) A, a connection of B, produces deeds relating to lands in B's possession which were deposited with him by B for safe custody. The custody is proper.

[1] General Acts, Vol. IV.

CHAPTER VI.

OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence [1] shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills [2][admitted to probate in British India] may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations.

(*a*) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(*b*) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(*c*) If a bill of exchange is drawn in a set of three, one only need be proved.

(*d*) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(*e*) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

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[1] Where, however, a Criminal Court finds that a confession or other statement of an accused person has not been recorded in manner prescribed, evidence may be taken that the recorded statement was duly made—*see* the Code of Criminal Procedure, 1898 (Act V of 1898), s. 533, General Acts, Vol. V.

[2] These words in s. 91, *Exception 2*, were substituted for the words "under the Indian Succession Act" by the Indian Evidence Act Amendment Act (XVIII of 1872), s. 7, *infra*.

Exclusion of evidence of oral agreement.

92. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (*1*).—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, [1][want or failure] of consideration, or mistake in fact or law.

Proviso (*2*).—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (*3*).—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (*4*).—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (*5*).—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved:

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (*6*).—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations.

(*a*) A policy of insurance is effected on goods "in ships from Calcutta to London." The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy cannot be proved.

(*b*) A agrees absolutely in writing to pay B Rs. 1,000 on the first March, 1873. The fact that, at the same time an oral agreement was made that the money should not be paid till the thirty-first March cannot be proved.

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[1] The words "want or failure" were substituted for the words "want of failure" by s. 8 of the Indian Evidence Act Amendment Act (XVIII of 1872), *infra*.

(*c*) An estate called "the Rampore tea estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(*d*) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(*e*) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(*f*) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(*g*) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: "Bought of A a horse for Rs. 500." B may prove the verbal warranty.

(*h*) A hires lodgings of B, and gives B a card on which is written—"Rooms, Rs. 200 a month." A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the term verbally.

(*i*) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount A may prove this.

(*j*) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

Exclusion of evidence to explain or amend ambiguous document.

93. When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations.

(*a*) A agrees, in writing, to sell a horse to B for Rs. 1,000 or Rs. 1,500. Evidence cannot be given to show which price was to be given.

(*b*) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

Exclusion of evidence against application of document to existing facts.

94. When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Illustration.

A sells to B, by deed, "my estate at Rampur containing 100 bighás." A has an estate at Rampur containing 100 bighás. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

Evidence as to document unmeaning in reference to existing facts.

95. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Illustration.

A sells to B, by deed, "my house in Calcutta."

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

Evidence as to application of language which can apply to one only of several persons.

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Illustrations.

(*a*) A agrees to sell to B, for Rs. 1,000, "my white horse." A has two white horses. Evidence may be given of facts which show which of them was meant.

(*b*) A agrees to accompany B to Haidarábád. Evidence may be given of facts showing whether Haidarábád in the Dekkhan or Haidarábád in Sind was meant.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

97. When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Illustration.

A agrees to sell to B "my land at X in the occupation of Y." A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

Evidence as to meaning of illegible characters, etc.

98. Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local and provincial expressions, of abbreviations and of words used in a peculiar sense.

Illustration.

A, a sculptor, agrees to sell to B, "all my mod." A has both models and modelling tools. Evidence may be given to show which he meant to sell.

Who may give evidence of agreement varying terms of document.

99. Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Illustration.

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

Saving of provisions of Indian Succession Act relating to wills.

100. Nothing in this Chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X of 1865)[1] as to the construction of wills.

[1] General Acts, Vol. I.

PART III.

PRODUCTION AND EFFECT OF EVIDENCE.

CHAPTER VII.

OF THE BURDEN OF PROOF.

Burden of proof.

101. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations.

(*a*) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(*b*) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true.

A must prove the existence of those facts.

On whom burden of proof lies.

102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations.

(*a*) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(*b*) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed as the bond is disputed and the fraud is not proved.

Therefore the burden of proof is on B.

Burden of proof as to particular fact.

103. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration.

[1](*a*) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

Burden of proving fact to be proved to make evidence admissible.

104. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

[1] *Sic* in the Act as published in Gazette of India, 1872, Pt. IV, p. 1. There is no illustration (*b*).

Illustrations.

(*a*) A wishes to prove a dying declaration by B. A must prove B's death.
(*b*) A wishes to prove, by secondary evidence, the contents of a lost document. A must prove that the document has been lost.

Burden of proving that case of accused comes within exceptions.

105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code,[1] or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

XLV of 1860.

Illustrations.

(*a*) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.
The burden of proof is on A.
(*b*) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.
The burden of proof is on A.
(*c*) Section 325 of the Indian Penal Code[1] provides that whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments.
A is charged with voluntarily causing grievous hurt under section 325.
The burden of proving the circumstances bringing the case under section 335 lies on A.

XLV of 1860.

Burden of proving fact especially within knowledge.

106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations.

(*a*) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.
(*b*) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

Burden of proving death of person known to have been alive within thirty years.

107. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Burden of proving that person is alive who has not been heard of for seven years.

108. [2][Provided that when] the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is [2][shifted to] the person who affirms it.

Burden of proof as to relationship

109. When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have

[1] General Acts, Vol I.
[2] These words in s. 108 were substituted for the original words "When" and "on" respectively, by the Indian Evidence Act Amendment Act, (XVIII of 1872), s. 9, *infra*.

in the cases of partners, landlord and tenant, principal and agent.

been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

Burden of proof as to ownership.

110. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Proof of good faith in transactions where one party is in relation of active confidence.

111. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations.

(*a*) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(*b*) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

Birth during marriage conclusive proof of legitimacy.

112. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

Proof of cession of territory.

113. A notification in the Gazette of India that any portion of British territory has been ceded to any Native State, Prince or Ruler,[1] shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

Court may presume existence of certain facts.

114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations.

The Court may presume—

(*a*) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(*b*) that an accomplice is unworthy of credit, unless he is corroborated in material particulars;

(*c*) that a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(*d*) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence;

[1] *See*, for example, Gazette of India, 1873, Pt. I, p. 2.

(*e*) that judicial and official acts have been regularly performed;

(*f*) that the common course of business has been followed in particular cases;

(*g*) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(*h*) that, if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;

(*i*) that when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it :—

as to *illustration* (*a*)—a shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business :

as to *illustration* (*b*)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself :

as to *illustration* (*b*)—a crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable :

as to *illustration* (*c*)—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence :

as to *illustration* (*d*)—it is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course :

as to *illustration* (*e*)—a judicial act, the regularity of which is in question, was performed under exceptional circumstances :

as to *illustration* (*f*)—the question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances :

as to *illustration* (*g*)—a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family :

as to *illustration* (*h*)—a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked :

as to *illustration* (*i*)—a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

CHAPTER VIII.

ESTOPPEL.

Estoppel.

115. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

Estoppel of tenant;

116. No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted

to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property; and no person who came upon any immoveable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given.

Land of licensee of person in possession.

Estoppel of acceptor of bill of exchange, bailee or licensee.

117. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license.

Explanation (*1*).—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation (*2*).—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

CHAPTER IX.

Of Witnesses.

Who may testify.

118. All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation.—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

Dumb witnesses.

119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

Parties to civil suit, and their wives or husbands. Husband or wife of person under criminal trial.

120. In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

Judges and Magistrate.

121. No judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any ques-

tions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Illustrations.

(*a*) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(*b*) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.

(*c*) A is accused before the Court of Session of attempting to murder a police-officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

Communications during marriage.

122. No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

Evidence as to affairs of State.

123. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Official communications.

124. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

Information as to commission of offences.

[1]**125.** No Magistrate or Police-officer [2] shall be compelled to say whence he got any information as to the commission of any offence, and no Revenue-officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.

Explanation.—"Revenue-officer" in this section means any officer employed in or about the business of any branch of the public revenue.

Professional communication.

126. No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his

[1] This section was substituted for the original s. 125 by the Indian Evidence Act (1872) Amendment Act, 1887 (III of 1887), General Acts, Vol. IV.

[2] All the privileges which a police-officer has under s. 125 of this Act have been conferred on a Commandant or Second-in-Command of military police in Burma, *see* the Burma Military Police Act (XV of 1887), s. 13, Bur. Code. *See* also the revised edition of the Act as modified up to 1st May, 1899, printed by the Government of Burma.

professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure—

(1) any such communication made in furtherance of any [1][illegal] purpose:

(2) any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, [2][pleader], attorney or vakil was or was not directed to such fact by or on behalf of his client.

Explanation.—The obligation stated in this section continues after the employment has ceased.

Illustrations.

(*a*) A, a client, says to B, an attorney—"I have committed forgery and I wish you to defend me."

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(*b*) A, a client, says to B, an attorney—"I wish to obtain possession of property by the use of a forged deed on which I request you to sue."

The communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(*c*) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

Section 126 to apply to interpreters, etc.

127. The provisions of section 126 shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys and vakils.

Privilege not waived by volunteering evidence.

128. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126; and, if any party to a suit or proceeding calls any such barrister, [2][pleader], attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney or vakil on matters which, but for such question, he would not be at liberty to disclose.

Confidential communica-

129. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal

[1] This word in s. 126 was substituted for the original word "criminal" by the Indian Evidence Act Amendment Act (XVIII of 1872), s. 10, *infra*.

[2] This word was inserted by the Indian Evidence Act Amendment Act (XVIII of 1872), s. 10.

professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others. tions with legal advisers.

130. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property or any document in virtue of which he holds any property as pledgee or mortgagee or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims. Production of title-deeds of witness, not a party.

131. No one shall be compelled to produce documents in his possession, which any other person would be entitled to refuse to produce if they were in his possession, unless such last-mentioned person consents to their production. Production of document which another person, having possession, could refuse to produce.

132. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind: Witness not excused from answering on ground that answer will criminate.

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer. Proviso.

133. An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Accomplice.

134. No particular number of witnesses shall in any case be required for the proof of any fact. Number of witnesses.

CHAPTER X.

Of the Examination of Witnesses.

135. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court. Order of production and examination of witnesses.

Judge to decide as to admissibility of evidence.

136. When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustration.

(*a*) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 32.

The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.

(*b*) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(*c*) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of possession to be proved before the property is identified.

(*d*) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C and D is proved, or may require proof of B, C and D before permitting proof of A.

Examination-in-chief.

137. The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination.

The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination.

The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

Order of examinations.

138. Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

Direction of re-examination.

The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

Cross-examination of person called to produce a document.

139. A person summoned to produce a document does not become a witness by the mere fact that he produces it and cannot be cross-examined unless and until he is called as a witness.

Witnesses to character.

140. Witnesses to character may be cross-examined and re-examined.

Leading questions.

141. Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

When they must not be asked.

142. Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

When they may be asked.

143. Leading questions may be asked in cross-examination.

Evidence as to matters in writing.

144. Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration

The question is, whether A assaulted B.

C deposes that he heard A say to D—"B wrote a letter accusing me of theft, and I will be revenged on him." This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

Cross-examination as to previous statements in writing.

[1]**145.** A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must,

[1] As to the application of s. 145 to police-diaries, *see* the Code of Criminal Procedure, 1898 (Act V of 1898), s. 172, General Acts, Vol. V.

before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

Questions lawful in cross-examination.

146. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend—

(1) to test his veracity,

(2) to discover who he is and what is his position in life, or

(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

When witness to be compelled to answer.

147. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto.

Court to decide when question shall be asked and when witness compelled to answer.

148. If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations:—

(1) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(2) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(3) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence:

(4) the Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

Question not to be asked without reasonable ground.

149. No such question as is referred to in section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Illustrations.

(*a*) A barrister is instructed by an attorney or vakil that an important witness is a dákáit. This is a reasonable ground for asking the witness whether he is a dákáit.

(*b*) A pleader is informed by a person in Court that an important witness is a dákáit the informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dákáit.

(*c*) A witness, of whom nothing whatever is known, is asked at random whether he is a dákáit. There are here no reasonable grounds for the question.

(*d*) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dákáit.

Procedure of Court in case of question being asked without reasonable grounds.

150. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil or attorney is subject in the exercise of his profession.

Indecent and scandalous questions.

151. The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Questions intended to insult or annoy.

152. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

Exclusion of evidence to contradict answers to questions testing veracity.

153. When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but, if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted.

Illustrations.

(*a*) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(*b*) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(*c*) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(*d*) A is asked whether his family has not had a bloodfeud with the family of B against whom he gives evidence.
He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

Question by party to his own witness.

154. The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

Impeaching credit of witness.

155. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:—

(1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(2) by proof that the witness has been bribed, or has accepted [1] the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

(4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations.

(*a*) A sues B for the price of goods sold and delivered to B. C says that A delivered the goods to B.
Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.
The evidence is admissible.
(*b*) A is indicted for the murder of B.
C says that B, when dying, declared that A had given B the wound of which he died.
Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.
The evidence is admissible.

Questions tending to corroborate evidence of relevant fact admissible.

156. When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which

[1] This word "accepted" in s. 155, para. (2), was substituted for the original word "had" by the Indian Evidence Act Amendment Act (XVIII of 1872), s. 11, *infra*.

such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Former statements of witness may be proved to corroborate later testimony as to same fact.

157. In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

What matters may be proved in connection with proved statement relevant under Section 32 or 33.

158. Whenever any statement, relevant under section 32 or 33, is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

Refreshing memory.

159. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

When witness may use copy of document to refresh memory.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document:

Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

Testimony to facts stated in document mentioned in section 159

160. A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

Right of adverse party as to writing used to refresh memory.

[1]**161.** Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it: such party may, if he pleases, cross-examine the witness thereupon.

Production of documents.

162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

Translation of documents.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence: and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code.[2] XLV of 1860.

Giving, as evidence, of document called for and produced on notice.

163. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

Using, as evidence, of document production of which was refused on notice.

164. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

Illustration.

A sues B on an agreement and gives B notice to produce it. At the trial A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

Judge's power to put questions or order production.

165. The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing: and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-

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[1] As to the application of s. 161 to police-diaries, *see* the Code of Criminal Procedure, 1898 (Act V of 1898), s. 172, General Act, Vol. V.

[2] General Acts, Vol. I.

examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

Power of jury or assessors to put questions.

166. In cases tried by jury or with assessors, the jury or assessors, may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put and which he considers proper.

CHAPTER XI.

Of Improper Admission and Rejection of Evidence.

No new trial for improper admission or rejection of evidence.

167. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

(*Schedule.—Enactments repealed.*)

SCHEDULE.

ENACTMENTS REPEALED.

(*See section 2.*)

Number and year.	Title.	Extent of repeal.
Stat. 26 Geo. III, Cap. 57.[1]	For the further regulation of the trial of persons accused of certain offences committed in the East Indies; for repealing so much of an Act, made in the twenty-fourth year of the reign of His present Majesty (intituled 'An Act for the better regulation and management of the affairs of the East India Company, and of the British possessions in India, and for establishing a Court of Judicature for the more speedy and effectual trial of persons accused of offences committed in the East Indies"), as requires the servants of the East India Company to deliver inventories of their estates and effects; for rendering the laws more effectual against persons unlawfully resorting to the East Indies; and for the more easy proof, in certain cases, of deeds and writings executed in Great Britain or India.	Section 38 so far as it relates to Courts of Justice in the East Indies.
Stat. 14 & 15 Vict., Cap. 99.[2]	To amend the Law of Evidence . .	Section 11 and so much of section 19 as relates to British India.
Act XV of 1852 .	To amend the Law of Evidence . .	So much as has not been heretofore repealed.
Act XIX of 1853[3] .	To amend the Law of Evidence in the Civil Courts of the East India Company in the Bengal Presidency.	Section 19.
Act II of 1855 . .	For the further improvement of the Law of Evidence.	So much as has not been heretofore repealed,
Act XXV of 1861[4] .	For simplifying the procedure of the Courts of Criminal Judicature not established by Royal Charter.	Section 237.
[5] * * * *	* * * *	* * * *

[1] The East India Company Act, 1788, Coll. Stat., Vol. I.

[2] Short title, The Evidence Act, 1851—see the Short Titles Act, 1896 (59 & 60 Vict., c. 14), printed in Coll. Stat., Vol. II,

[3] The Recusant Witnesses Act, 1853, since repealed, except in Assam, by the Repealing and Amending Act, 1903 (I of 1903). For s. 26, the only section now in force in Assam, see E. B. and A. Code.

[4] Repealed by Act X of 1872.

[5] The entry relating to ss. 7 and 8 of the General Clauses Act, 1868 (1 of 1868), was repealed by the General Clauses Act, 1897 (X of 1897), General Acts, Vol. IV.

THE SPECIAL MARRIAGE ACT, 1872.

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ACT No. III OF 1872.[1]

[*22nd March 1872.*]

An Act to provide a form of Marriage in certain cases.

Preamble.

WHEREAS it is expedient to provide a form of marriage for persons who do not profess the Christian, Jewish, Hindú, Muhammadan, Pársí, Buddhist, Sikh or Jaina religion, and to legalize certain marriages the validity of which is doubtful; It is hereby enacted as follows:—

Local extent.

1. This Act extends to the whole of British India.[2]

[*Commencement.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

Conditions upon which marriages under Act may be celebrated.

2. Marriages may be celebrated under this Act between persons neither of whom professes the Christian or the Jewish, or the Hindú or the Muhammadan, or the Pársí or the Buddhist, or the Sikh or the Jaina religion, upon the following conditions:—

(1) neither party must, at the time of the marriage, have a husband or wife living:

(2) the man must have completed his age of eighteen years, and the woman her age of fourteen years, according to the Gregorian calendar:

(3) each party must, if he or she has not completed the age of twenty-one years, have obtained the consent of his or her father or guardian to the marriage:

(4) the parties must not be related to each other in any degree of consanguinity or affinity which would, according to any law to which either of them is subject, render a marriage between them illegal.

1st Proviso.—No such law or custom, other than one relating to consanguinity or affinity, shall prevent them from marrying.

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[1] Short title, The Special Marriage Act, 1872. *See* the Indian Short Titles Act, 1897 (XIV of 1897), General Act, Vol. IV.

There was no Statement of Objects and Reasons; the Bill as introduced was published in the Gazette of India, 1868, p. 1403; for the Report of the Select Committee, dated 21st December, 1871, *see ibid*, 1871, Pt. V, p. 519; for discussions in Council, *see ibid*, 1868, Supplement, pp. 890 and 1197; *ibid*, 1871, Extra Supplement, pp. 16 and 42; *ibid*, 1872, Supplement, pp. 2, 57, 193 and 261.

[2] Act III of 1872 has been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (III of 1899), Ben. Code; in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890), s. 3, Bal. Code; in Angul and the Khondmals by the Angul District Regulation, 1894 (I of 1894), s. 3, Ben. Code.

It has been declared by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, *infra*, to be in force in the following Scheduled Districts, namely:—

the Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum—*see* Gazette of India, 1881, Pt. I, p. 504. The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894. The District of Lohárdaga is now called the Ranchi District;

the North-Western Provinces Tarái—*ibid*, 1876, Pt. I, p. 505.

2nd Proviso.—No law or custom as to consanguinity shall prevent them from marrying, unless a relationship can be traced between the parties through some common ancestor, who stands to each of them in a nearer relationship than that of great-great-grand-father or great-great-grand-mother, or unless one of the parties is the lineal ancestor, or the brother or sister of some lineal ancestor, of the other.

Appointment of Marriage Registrars.

3. The Local Government may appoint one or more Registrars under this Act, either by name or as holding any office for the time being, for any portion of the territory subject to its administration. The officer so appointed shall be called "Registrar of Marriages under Act III of 1872," and is hereinafter referred to as "the Registrar." The portion of territory for which any such officer is appointed shall be deemed his district.[1]

One of the parties to intended marriage to give notice to Registrar.

4. When a marriage is intended to be solemnized under this Act, one of the parties must give notice in writing to the Registrar before whom it is to be solemnized.

The Registrar to whom such notice is given must be the Registrar of a district within which one at least of the parties to the marriage has resided for fourteen days before such notice is given.

Such notice may be in the form given in the first schedule to this Act.

Notice to be filed and copy entered in the Marriage Notice Book.

5. The Registrar shall file all such notices and keep them with the records of his office, and shall also forthwith enter a true copy of every such notice in a book to be for that purpose furnished to him by the Government, to be called the "Marriage Notice Book under Act III of 1872," and such book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

Objection to marriage.

6. Fourteen days after notice of an intended marriage has been given under section 4, such marriage may be solemnized, unless it has been previously objected to in the manner hereinafter mentioned.

Any person may object to any such marriage on the ground that it would contravene some one or more of the conditions prescribed in clause (1), (2), (3) or (4) of section 2.

The nature of the objection made shall be recorded in writing by the Registrar in the register, and shall, if necessary, be read over and explained to the person making the objection, and shall be signed by him or on his behalf.

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[1] For notifications appointing Registrars under this section for districts in—
(*a*) Assam, *see* Assam Rules Manual, Ed. 1893, p. 26;
(*b*) Burma, *see* Burma Gazette, 1902, Pt. I, p. 607;
(*c*) Bombay Presidency, *see* Bom. R. & O.;
(*d*) Central Provinces, *see* C. P. R. & O.;
(*e*) United Provinces of Agra and Oudh, *see* notification quoted at page 42 of the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894.

Procedure on receipt of objection.

7. On receipt of such notice of objection the Registrar shall not proceed to solemnize the marriage until the lapse of fourteen days from the receipt of such objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, until the lapse of fourteen days from the opening of such Court.

Objector may file suit.

The person objecting to the intended marriage may file a suit in any Civil Court having local jurisdiction (other than a Court of Small Causes) for a declaratory decree, declaring that such marriage would contravene some one or more of the conditions prescribed in clause (1), (2), (3) or (4) of section 2.

Certificate of filing of suit to be lodged with Registrar.

8. The officer before whom such suit is filed shall thereupon give the person presenting it a certificate to the effect that such suit has been filed. If such certificate be lodged with the Registrar within fourteen days from the receipt of notice of objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, within fourteen days of the opening of such Court, the marriage shall not be solemnized till the decision of such Court has been given and the period allowed by law for appeals from such decision has elapsed; or, if there be an appeal from such decision, till the decision of the Appellate Court has been given.

If such certificate be not lodged in the manner and within the period prescribed in the last preceding paragraph, or if the decision of the Court be that such marriage would not contravene any one or more of the conditions prescribed in clause (1), (2), (3) or (4) of section 2, such marriage may be solemnized.

If the decision of such Court be that the marriage in question would contravene any one or more of the conditions prescribed in clause (1), (2), (3) or (4) of section 2, the marriage shall not be solemnized.

Court may fine when objection not reasonable.

9. Any Court in which any such suit as is referred to in section 7 is filed may, if it shall appear to it that the objection was not reasonable and *bonâ fide*, inflict a fine, not exceeding one thousand rupees, on the person objecting, and award it, or any part of it, to the parties to the intended marriage.

Declaration by parties and witnesses.

10. Before the marriage is solemnized, the parties and three witnesses shall, in the presence of the Registrar, sign a declaration in the form contained in the second schedule to this Act. If either party has not completed the age of twenty-one years, the declaration shall also be signed by his or her father or guardian, except in the case of a widow, and, in every case, it shall be countersigned by the Registrar.

Marriage how to be solemnized.

11. The marriage shall be solemnized in the presence of the Registrar and of the three witnesses who signed the declaration. It may be solemnized in any form, provided that each party says to the other, in the presence and hearing of the Registrar and witnesses, "I, [*A*], take thee, [*B*], to be my lawful wife (*or* husband)."

Place where marriage may be solemnized.

12. The marriage may be celebrated either at the office of the Registrar or at such other place, within reasonable distance of the office of the Registrar, as the parties desire: Provided that the Local Government may prescribe the conditions under which such marriages may be solemnized at places other than the Registrar's office, and the additional fees to be paid thereupon.[1]

Certificate of marriage.

13. When the marriage has been solemnized, the Registrar shall enter a certificate thereof in a book to be kept by him for that purpose and to be called the "Marriage Certificate Book under Act III of 1872," in the form given in the third schedule to this Act, and such certificate shall be signed by the parties to the marriage and the three witnesses.

Transmission of certified copies of entries in marriage-certificate book to the Registrar General of Births, Deaths and Marriages.

[2]**13A.** The Registrar shall send to the Registrar General of Births, Deaths and Marriages for the territories within which his district is situate, at such intervals as the Governor General in Council from time to time directs,[3] a true copy certified by him, in such form as the Governor General in Council from time to time prescribes, of all entries made by him in the said marriage-certificate book since the last of such intervals.[4]

Fees.

14. The Local Government shall prescribe the fees to be paid to the Registrar for the duties to be discharged by him under this Act.[5]

The Registrar may, if he think fit, demand payment of any such fee before solemnization of the marriage or performance of any other duty in respect of which it is payable.

The said Marriage-Certificate Book shall at all reasonable times be open for inspection, and shall be admissible as evidence of the truth of the statements therein contained. Certified extracts therefrom shall on application be given by the Registrar on the payment to him by the applicant of a fee to be fixed by the Local Government for each such extract.

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[1] For rules framed under this section for—
(*a*) Assam, *see* Assam Rules Manual, Ed. 1893, p. 27;
(*b*) United Provinces of Agra and Oudh, *see* notification quoted at page 42 of the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894.

[2] S. 13A was inserted by s. 29 of the Births, Deaths and Marriages Registration Act, 1886 (VI of 1886), General Acts, Vol. III.

[3] For orders issued under this section, *see* Gazette of India, 1889, Supplement, p. 921.

[4] As to duty of the Registrar General to make and keep indexes of the certified copies sent to his office under this section, *see* the Births, Deaths and Marriages Registration Act, 1886 (VI of 1886), s. 7, printed, General Acts, Vol. III.

[5] For scales of fees to be paid to Registrars of Marriages prescribed by—
(*a*) the Government of Bombay, *see* Bom. R. and O.;
(*b*) Burma, *see* Burma Gazette, 1902, Pt. I, p. 737;
(*c*) Chief Commissioner, Central Provinces, *see* C. P. R. and O.;
(*d*) Government, United Provinces, *see* notification quoted at page 42 of the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894.

Penalty on married person marrying again under Act.

15. Every person who, being at the time married, procures a marriage of himself to be solemnized under this Act, shall be deemed to have committed an offence under section 494 or section 495 of the Indian Penal Code,[1] as the case may be; and the marriage so solemnized is void. XLV of 1860.

Punishment of bigamy.

16. Every person married under this Act who, during the lifetime of his or her wife or husband, contracts any other marriage, shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code [1] for the offence of marrying again during the lifetime of a husband or wife, whatever may be the religion which he or she professed at the time of such second marriage. XLV of 1860.

Indian Divorce Act to apply.

17. The Indian Divoree Act [2] shall apply to all marriages contracted under this Act, and any such marriage may be declared null or dissolved in the manner therein provided, and for the causes therein mentioned, or on the ground that it contravenes some one or more of the conditions prescribed in clause (1), (2), (3) or (4) of section 2 of this Act. IV of 1869.

Law to apply to issue of marriages under Act.

18. The issue of marriages solemnized under this Act shall, if they marry under this Act, be deemed to be subject to the law to which their fathers were subject as to the prohibition of marriages by reason of consanguinity and affinity, and the provisos to section 2 of this Act shall apply to them.

Saving of marriages solemnized otherwise than under Act.

19. Nothing in this Act contained shall affect the validity of any marriage not solemnized under its provisions; nor shall this Act be deemed directly or indirectly to affect the validity of any mode of contracting marriage; but, if the validity of any such mode shall hereafter come into question before any Court, such question shall be decided as if this Act had not been passed.

20. [*Registry of marriages contracted before passing of Act.*] *Rep. by the Repealing Act, 1876 (XII of 1876).*

Penalty for signing declarations or certificates containing false statements.

21. Every person making, signing or attesting any declaration or certificate prescribed by this Act, containing a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed guilty of the offence described in section 199 of the Indian Penal Code.[1] XLV of 1860.

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[1] General Acts, Vol. I.
[2] *Supra.*

FIRST SCHEDULE.

(*See section 4.*)

NOTICE OF MARRIAGE.

To , a Registrar of Marriages under Act III of 1872 for the District.

I hereby give you notice that a marriage under Act III of 1872 is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described (that is to say):—

Names.	Condition	Rank or profession.	Age.	Dwelling-place.	Length of residence.
A B	Unmarried. Widower.	Landowner.	Of full age.	....	23 days.
C D	Spinster.	....	Minor.	....	....

Witness my hand, this day of 187 .

(*Signed*) *A. B.*

SECOND SCHEDULE.

(*See section 10.*)

DECLARATION TO BE MADE BY THE BRIDEGROOM.

I, *A B*, hereby declare as follows:—

1. I am at the present time unmarried:

2. I do not profess the Christian, Jewish, Hindú, Muhammadan, Pársí, Buddhist, Sikh or Jaina religion:

3. I have completed my age of eighteen years:

4. I am not related to *C D* [*the bride*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *C D* is subject, and subject to the provisos of clause (4) of section 2 of Act III of 1872, render a marriage between us illegal:

[*And when the bridegroom has not completed his age of twenty-one years:*

5. The consent of my father [*or* guardian, *as the case may be*] has been given to a marriage between myself and *C D*, and has not been revoked:]

6. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(*Signed*) *A B* [*the bridegroom*].

DECLARATION TO BE MADE BY THE BRIDE.

I, *C D*, hereby declare as follows:—

1. I am at the present time unmarried:

2. I do not profess the Christian, Jewish, Hindú, Muhammadan, Pársí, Buddhist, Sikh or Jaina religion:

3. I have completed my age of fourteen years:

4. I am not related to *A B* [*the bridegroom*] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *A B* is subject, and subject to the provisos of clause (4) of section 2 of Act III of 1872, render a marriage between us illegal:

[*And when the bride has not completed her age of twenty-one years, unless she is a widow:*

5. The consent of *M N*, my father [*or* guardian, *as the case may be*] has been given to a marriage between myself and *A B* and has not been revoked:]

6. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(*Signed*) *C D* [*the bride*].

Signed in our presence by the above-named *A B* and *C D*:

G H,
I J, [*three witnesses*].
K L,

[*And where the bridegroom or bride has not completed the age of twenty-one years, except in the case of a widow:*

Signed in my presence and with my consent by the above-named *A B* and *C D*:

M N, the father [*or guardian*] of the above-mentioned *A B* (*or C D, as the case may be*).]

(*Countersigned*) *E F*,
Registrar of Marriages under Act III of 1872 for the District of

Dated the day of 18 .

THIRD SCHEDULE.

(*See section 13.*)

REGISTRAR'S CERTIFICATE.

I, *E F*, certify that, on the of 18 appeared before me *A B* and *C D*, each of whom in my presence and in the presence of three credible witnesses, whose names are signed hereunder, made the declarations required by Act III of 1872, and that a marriage under the said Act was solemnized between them in my presence.

(*Signed*) *E F*,
Registrar of Marriages under Act III of 1872 for the District of .

(*Signed*) *A B*,
C D.
G H,
I J,
K L, } [*three witnesses*].

Dated the day of 18 .

FOURTH SCHEDULE.

[*Rep. by the Repealing Act, 1876 (XII of 1876).*]

THE INDIAN CONTRACT ACT, 1872.

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SCHEDULE.—ENACTMENTS REPEALED.

ACT No. IX OF 1872.[1]

[*25th April, 1872.*]

THE INDIAN CONTRACT ACT, 1872.

WHEREAS it is expedient to define and amend certain parts of the law relating to contracts; It is hereby enacted as follows:— Preamble.

PRELIMINARY.

1. This Act may be called the Indian Contract Act, 1872. Short title.

[1] For the Statement of Objects and Reasons for the Bill which was based on a report of Her Majesty's Commissioners appointed to prepare a body of substantive law for India, dated July 6th, 1866, *see* Gazette of India, 1867, Extraordinary, p. 34; for the Report of the Select Committee, *see ibid*, Extraordinary, dated 28th March, 1872; for discussions in Council, *see ibid*, 1867, Supplement, p. 1064; *ibid*, 1871, p. 313; and *ibid*, 1872, p. 527.
The chapters and sections of the Transfer of Property Act, 1882 (IV of 1882), which relate to contracts are, in places in which that Act is in force, to be taken as part of Act IX of 1872—*see* Act IV of 1882, s. 4, General Acts, Vol. III.

Extent. Commencement. Enactments repealed.

It extends to the whole of British India [1] ; and it shall come into force on the first day of September, 1872.

The enactments mentioned in the schedule hereto are repealed to the extent specified in the third column thereof; but nothing herein contained shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

Interpretation-clause.

2. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

(*a*) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal:

(*b*) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted,[2] becomes a promise:

(*c*) The person making the proposal is called the "promisor," and the person accepting the proposal is called the "promisee":

(*d*) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise:

(*e*) Every promise and every set of promises, forming the consideration for each other, is an agreement:

(*f*) Promises which form the consideration or part of the consideration for each other are called reciprocal promises:

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[1] Act IX of 1872 has been declared in force in—
the Santhál Parganas—*see* the Santhál Parganas Settlement Regulation (III of of 1872), as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (III of 1899), s. 3 [Ben. Code];
the Arakan Hill District—*see* the Arakan Hill District Laws Regulation, 1874 (IX of 1874), s. 3 [Bur. Code];
Upper Burma generally (except the Shan States)—*see* the Burma Laws Act, 1898 (XIII of 1898), s. 4 (*l*) [Bur. Code].
British Baluchistan—*see* the British Baluchistan Laws Regulation, 1890 (I of 1890), s. 3, Bal. Code.
It has been declared by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874) [*infra*], to be in force in—
the Tarai of the Province of Agra—*see* Gazette of India, 1876, Pt. I, p. 505;
the Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum—*see* Gazette of India, 1881, Pt. I, p. 504. (The District of Lohardaga included at this time the present District of Palamau which was separated in 1894. The District of Lohardaga is now called the Ranchi District—*see* Calcutta Gazette, 1899, Pt. I, p. 44.)

[2] As to when communication of acceptance becomes complete, *see* s. 4, *ill.* (*b*), *infra*.

(*g*) An agreement not enforceable by law is said to be void:

(*h*) An agreement enforceable by law is a contract:

(*i*) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract:

(*j*) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

CHAPTER I.

OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS.

Communication, acceptance and revocation of proposals.

3. The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.

Communication when complete.

4. The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete,—

as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor;

as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete,—

as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;

as against the person to whom it is made, when it comes to his knowledge.

Illustrations.

(*a*) A proposes, by letter, to sell a house to B at a certain price.
The communication of the proposal is complete when B receives the letter.

(*b*) B accepts A's proposal by a letter sent by post.
The communication of the acceptance is complete,—
as against A, when the letter is posted;
as against B, when the letter is received by A.

(*c*) A revokes his proposal by telegram.
The revocation is complete as against A when the telegram is despatched. It is complete as against B when B receives it.

B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is despatched, and as against A when it reaches him.

Revocation of proposals and acceptances.

5. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustrations.

A proposes, by r letter sent by post, to sell his house to B.
B accepts the proposal by a letter sent by post.
A may revcke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.
B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

Revocation how made.

6. A proposal is revoked—

(1) by the communication of notice of revocation by the proposer to the other party;

(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;

(3) by the failure of the acceptor to fulfil a condition precedent to acceptance; or

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Acceptance must be absolute.

7. In order to convert a proposal into a promise, the acceptance must—

(1) be absolute and unqualified;

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance.

Acceptance by performing, conditions, or receiving consideration.

8. Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

Promises, express and implied.

9. In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

CHAPTER II.

OF CONTRACTS, VOIDABLE CONTRACTS AND VOID AGREEMENTS.

What agreements are contracts.

10. All agreements are contracts [1] if they are made by the free consent of parties competent to contract, for a lawful consideration [2] and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in British India, and not hereby expressly repealed, by which any contract is required to be made in writing [3] or in the presence of witnesses, or any law relating to the registration of documents.

Who are competent to contract.

11. Every person is competent to contract who is of the age of majority according to the law to which he is subject,[4] and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

What is a sound mind for the purposes of contracting.

12. A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Illustrations.

(*a*) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(*b*) A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

"Consent" defined.

13. Two or more persons are said to consent when they agree upon the same thing in the same sense.

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[1] *See* s. 2, cl. (*h*), *supra*.

[2] *See* s. 25, *expln.* 2, and s. 102, *infra*.

[3] *See e.g.*, s. 25, *infra;* the Indian Copyright Act, 1847 (XX of 1847), s. 5, General Acts, Vol. I; the Apprentices Act, 1850 (XIX of 1850), s. 8, *ibid;* the Conveyance of Land Act, 1854 (XXXI of 1854), ss. 14 and 18, *ibid;* the Workman's Breach of Contract Act, 1859 (XIII of 1859), s. 4, *ibid;* the Carriers Act, 1865 (III of 1865), ss. 6 and 7, General Acts, Vol. I; Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), s. 24 [Coll. Stat., Vol. II]; the Presidency Banks Act, 1876 (XI of 1876), s. 9, *infra;* the Indian Companies Act, 1882 (VI of 1882), ss. 6, 39, 46 and 67, General Acts, Vol. III.

[4] *See* the Indian Majority Act, 1875 (IX of 1875), General Acts, Vol. II. For an exception to this rule in the case of emigrants, *see* s. 9 of the Assam Labour and Emigration Act 1901 (VI of 1901), Ben. Code, E. B. and A. Code, U. P. Code.

"Free consent" defined.

14. Consent is said to be free when it is not caused by—

(1) coercion, as defined in section 15, or

(2) undue influence, as defined in section 16, or

(3) fraud, as defined in section 17, or

(4) misrepresentation, as defined in section 18, or

(5) mistake subject to the provisions of sections 20, 21 and 22.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

"Coercion" defined.

15. "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code,[1] or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. XLV of 1860.

Explanation.—It is immaterial whether the Indian Penal Code [1] is or is not in force in the place where the coercion is employed. XLV of 1860.

Illustrations.

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Indian Penal Code.[1] XLV of 1860.

A afterwards sues B for breach of contract at Calcutta.

A has employed coercion, although his act is not an offence by the law of England, and although section 506 of the Indian Penal Code[1] was not in force at the time when or place where the act was done. XLV of 1860.

"Undue influence" defined.

[2] **16.** (*1*) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(*2*) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(*a*) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other: or

(*b*) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(*3*) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue in-

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[1] General Acts, Vol. I.

[2] This section was substituted for the original s. 16 by the Indian Contract Act Amendment Act, 1899 (VI of 1899), s. 2, General Acts, Vol. V.

fluence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872.[1]

I of 1872.

Illustrations.

(*a*) A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(*b*) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

(*c*) A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(*d*) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

"Fraud" defined.

17. "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent,[2] with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:—

(1) the suggestion, as to a fact, of that which is not true by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak,[3] or unless his silence is, in itself, equivalent to speech.

Illustrations.

(*a*) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.

(*b*) B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

(*c*) B says to A—"If you do not deny it, I shall assume that the horse is sound." A says nothing. Here, A's silence is equivalent to speech.

(*d*) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B.

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[1] *Supra.*

[2] Compare s. 238, *infra.*

[3] *See* s. 143, *infra.*

"Misrepresentation" defined.

18. "Misrepresentation" means and includes—

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him;

(3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Voidability of agreements without free consent.

19. When consent to an agreement is caused by coercion, * * * * * [1], fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

Illustrations.

(*a*) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.

(*b*) A, by a misrepresentation, leads B erroneously to believe that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

(*c*) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and the mortgage-debt redeemed.

(*d*) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an under-value. The contract is voidable at the option of A.

(*e*) A is entitled to succeed to an estate at the death of B; B dies : C, having received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

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[1] The words "undue influence" were repealed by the Indian Contract Act Amendment Act, 1899 (VI of 1899), s. 3, General Acts, Vol. V.

[1]**19A.** When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. Power to set aside contract induced by undue influence.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

Illustrations.

(*a*) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(*b*) A, a money-lender, advances Rs. 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for Rs. 200 with interest at 6 per cent. per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just.

20. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void. Agreement void where both parties are under mistake as to matter of fact.

Explanation.—An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.

Illustrations.

(*a*) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of the facts. The agreement is void.

(*b*) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(*c*) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

21. A contract is not voidable because it was caused by a mistake as to any law in force in British India; but a mistake as to a law not in force in British India has the same effect as a mistake of fact. Effect of mistakes as to law.

Illustrations.

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation: the contract is not voidable.

A and B make a contract grounded on an erroneous belief as to the law regulating bills of exchange in France: the contract is voidable.

22. A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact. Contract caused by mistake of one party as to matter of fact.

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[1] S. 19A was inserted by the Indian Contract Act Amendment Act, 1899 (VI of 1899), s. 3, General Acts, Vol. V.

What considerations and objects are lawful and what not.

23. The consideration or object of an agreement is lawful, unless—
it is forbidden by law[1]; or
is of such a nature that, if permitted, it would defeat the provisions of any law; or
is fraudulent; or
involves or implies injury to the person or property of another; or
the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Illustrations.

(*a*) A agrees to sell his house to B for 10,000 rupees. Here B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations.

(*b*) A promises to pay B 1,000 rupees at the end of six months, if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here the promise of each party is the consideration for the promise of the other party and they are lawful considerations.

(*c*) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here A's promise is the consideration for B's payment, and B's payment is the consideration for A's promise, and these are lawful considerations.

(*d*) A promises to maintain B's child and B promises to pay A 1,000 rupees yearly for the purpose. Here the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(*e*) A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(*f*) A promises to obtain for B an employment in the public service, and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.

(*g*) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment by A, on his principal.

(*h*) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(*i*) A's estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.

(*j*) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.

(*k*) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code.[1] XLV of 1860.

Void Agreements.

Agreements void, if considerations and objects unlawful in part.

24. If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

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[1] *See* ss. 26, 27, 28, 30, *infra*.
[2] General Acts, Vol. I.

Illustration.

A promises to superintend, on behalf of B, a legal manufacture of indigo, and an illegal traffic in other articles. B promises to pay to A a salary of 10,000 rupees a year. The agreement is void, the object of A's promise and the consideration for B's promise being in part unlawful.

25. An agreement made without consideration is void, unless—

Agreement without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law.

(1) it is expressed in writing and registered under the law for the time being in force for the registration of [documents],[1] and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do, or unless

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Illustrations.

(*a*) A promises, for no consideration, to give to B Rs. 1,000. This is a void agreement.

(*b*) A, for natural love and affection, promises to give his son, B, Rs. 1,000. A puts his promise to B into writing and registers it. This is a contract.

(*c*) A finds B's purse and gives it to him. B promises to give A Rs. 50. This is a contract.

(*d*) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(*e*) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.

(*f*) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

(*g*) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given.

The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.

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[1] "Documents" was substituted for "assurances" by the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol. IV.

Agreement in restraint of marriage void.

26. Every agreement in restraint of the marriage of any person, other than a minor, is void.

Agreement in restraint of trade void.

27. Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Saving of agreement not to carry on business of which good-will is sold;

Exception 1.—One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein: Provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

of agreement between partners prior to dissolution,

Exception 2.—Partners may, upon or in anticipation of a dissolution of the partnership, agree that some or all of them will not carry on a business similar to that of the partnership within such local limits as are referred to in the last preceding exception.

or during continuance of partnership.

Exception 3.—Partners may agree that some one or all of them will not carry on any business, other than that of the partnership, during the continuance of the partnership.

Agreements in restraint of legal proceedings void.

28. Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Saving of contract to refer to arbitration dispute that may arise.

Exception 1.—This section shall not render illegal a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Suits barred by such contracts.

[1] *When such a contract has been made, a suit may be brought for its specific performance, and if a suit, other than for such specific performance, or for the recovery of the amount so awarded, is brought by one party to such contract against any other such party in respect of any subject which they have so agreed to refer, the existence of such contract shall be a bar to the suit.*

Saving of contract to refer questions that have

Exception 2.—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any

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[1] The second clause of *exception 1* is repealed by the Specific Relief Act, 1877 (I of 1877), throughout British India. The clause is, however, printed here in italics, because the Contract Act is in force in certain Scheduled Districts to which the Specific Relief Act does not apply.

For Act I of 1877, *see infra.*

provision of any law in force for the time being as to references to arbitration.[1] already arisen.

29. Agreements, the meaning of which is not certain, or capable of being made certain, are void. Agreements void for uncertainty.

Illustrations.

(*a*) A agrees to sell to B "a hundred tons of oil." There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(*b*) A agrees to sell to B one hundred tons of oil of a specified description, known as an article of commerce. There is no uncertainty here to make the agreement void.

(*c*) A, who is a dealer in cocoanut-oil only, agrees to sell to B "one hundred tons of oil." The nature of A's trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of cocoanut-oil.

(*d*) A agrees to sell B "all the grain in my granary at Ramnagar". There is no uncertainty here to make the agreement void.

(*e*) A agrees to sell to B "one thousand maunds of rice at a price to be fixed by C." As the price is capable of being made certain, there is no uncertainty here to make the agreement void.

(*f*) A agrees to sell to B "my white horse for rupees five hundred or rupees one thousand." There is nothing to show which of the two prices was to be given. The agreement is void.

30. Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made. Agreements by way of wager void.

This section shall not be deemed to render unlawful a subscription, or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse race.[2] Exception in favour of certain prizes for horse-racing.

Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code[3] apply. Section 294A of the Indian Penal Code not affected.

XLV of 1860.

CHAPTER III.

OF CONTINGENT CONTRACTS.

31. A "contingent contract" is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen. "Contingent contract" defined

Illustration.

A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract.

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[1] *Cf.* the Code of Civil Procedure, 1908 (Act V of 1908), s. 89 and Sch. II, General Acts, Vol. VI, the Indian Arbitration Act, 1899 (IX of 1899), General Acts, Vol. V, and the Indian Companies Act, 1882 (VI of 1882), ss. 206-211, General Acts, Vol. III.

[2] *Cf.* the Gaming Act (8 & 9 Vict., c. 109), s. 18.

[3] General Acts, Vol. I.

(Chapter III.—Of Contingent Contracts.)

Enforcement of contracts contingent on an event happening.

32. Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.

If the event becomes impossible, such contracts become void.

Illustrations.

(*a*) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's lifetime.

(*b*) A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.

(*c*) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

Enforcement of contracts contingent on an event not happening.

33. Contingent contracts to do or not to do anything if an uncertain future event does not happen can be enforced when the happening of that event becomes impossible, and not before.

Illustration.

A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person.

34. If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

Illustration.

A agrees to pay B a sum of money if B marries C.

C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die and that C may afterwards marry B.

When contracts become void which are contingent on happening of specified event within fixed time.

35. Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

When contracts may be enforced which are contingent on specified event not happening within fixed time.

Contingent contracts to do or not to do anything if a specified uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired and such event has not happened, or, before the time fixed has expired, if it becomes certain that such event will not happen.

Illustrations.

(*a*) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.

(*b*) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

Agreement contingent on impossible events void.

36. Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Illustrations.

(*a*) A agrees to pay B 1,000 rupees if two straight lines should enclose a space. The agreement is void.

(*b*) A agrees to pay B 1,000 rupees if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

CHAPTER IV.

OF THE PERFORMANCE OF CONTRACTS.

Contracts which must be performed.

Obligation of parties to contracts.

37. The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

Illustrations.

(*a*) A promises to deliver goods to B on a certain day on payment of Rs. 1,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs. 1,000 to A's representatives.

(*b*) A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

Effect of refusal to accept offer of performance.

38. Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Every such offer must fulfil the following conditions:—

(1) it must be unconditional:

(2) It must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do:

(3) if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing

offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

Illustration.

A contracts to deliver to B at his warehouse, on the 1st March, 1873, 100 bales of cotton of a particular quality. In order to make an offer of a performance with the effect stated in this section, A must bring the cotton to B's warehouse, on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

Effect of refusal of party to perform promise wholly.

39. When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

Illustrations.

(*a*) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

(*b*) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night A wilfully absents herself. With the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night.

By whom Contracts must be performed.

Person by whom promise is to be performed.

40. If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

Illustrations.

(*a*) A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B or by causing it to be paid to B by another; and, if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

(*b*) A promises to paint a picture for B. A must perform this promise personally.

Effect of accepting performance from third person.

41. When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Devolution of joint liabilities.

42. When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons,

during their joint lives, and after the death, of any of them, his representative jointly with the survivor or survivors, and after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

Any one of joint promisors may be compelled to perform.

43. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any [1][one or more] of such joint promisors to perform the whole of the promise.

Each promisor may compel contribution.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Sharing of loss by default in contribution.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Explanation.—Nothing in this section shall prevent a surety from recovering from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

Illustrations.

(*a*) A, B and C jointly promise to pay D 3,000 rupees. D may compel either A or B or C to pay him 3,000 rupees.

(*b*) A, B and C jointly promise to pay D the sum of 3,000 rupees. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 rupees from A's estate, and 1,250 rupees from B.

(*c*) A, B and C are under a joint promise to pay D 3,000 rupees. C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive 1,500 rupees from B.

(*d*) A, B and C are under a joint promise to pay D 3,000 rupees, A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

Effect of release of one joint promisor.

44. Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.[2]

45. When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or

[1] These words were substituted for the original word "one" by the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol. IV.

[2] *See* s. 138, *infra*.

survivors, and, after the death of the last survivor, with the representatives of all jointly.[1]

Illustration.

A, in consideration of 5,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and after the death of C with the representatives of B and C jointly.

Time and Place for Performance.

Time for performance of promise where no application is to be made and no time is specified.

46. Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Explanation.—The question "what is a reasonable time" is, in each particular case, a question of fact.

Time and place for performance of promise where time is specified and no application to be made.

47. When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

Illustration.

A promises to deliver goods at B's warehouse on the first January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

Application for performance on certain day to be at proper time and place.

48. When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

Explanation.—The question "what is a proper time and place" is, in each particular case, a question of fact.

Place for performance of promise where no application to be made and no place fixed for performance.

49. When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

Illustration.

A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

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[1] For an exception to s. 45 in case of Government securities, *see* the Indian Securities Act, 1886 (XIII of 1886), s. 5, General Acts, Vol. III.

(*Chapter IV.—Of the Performance of Contracts.*)

50. The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions. Performance in manner or at time prescribed or sanctioned by promisee.

Illustrations.

(*a*) B owes A 2,000 rupees. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

(*b*) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement. This amounts to a payment by A and B, respectively, of the sums which they owed to each other.

(*c*) A owes B 2,000 rupees. B accepts some of A's goods in reduction of the debt. The delivery of the goods operates as a part payment.

(*d*) A desires B, who owes him Rs. 100, to send him a note for Rs. 100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A.

Performance of Reciprocal Promises.

51. When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise. Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.

Illustrations.

(*a*) A and B contract that A shall deliver goods to B to be paid for by B on delivery.

A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery.

B need not pay for the goods, unless A is ready and willing to deliver them on payment.

(*b*) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery.

A need not deliver, unless B is ready and willing to pay the first instalment on delivery.

B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment.

52. Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and, where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires. Order of performance of reciprocal promises.

Illustrations.

(*a*) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

(*b*) A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

53. When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and Liability of party preventing event on

which contract is to take effect.

he is entitled to compensation [1] from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

Illustration.

A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B; and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises.

54. When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

Illustrations.

(*a*) A hires B's ship to take in and convey, from Calcutta to the Mauritius, a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A cannot claim the performance of B's promise, and must make compensation to B for the loss which B sustains by the non-performance of the contract.

(*b*) A contracts with B to execute certain builder's work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.

(*c*) A contracts with B to deliver to him, at a specified price, certain merchandise on board a ship which cannot arrive for a month, and B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week. A's promise to deliver need not be performed, and B must make compensation.

(*d*) A promises B to sell him one hundred bales of merchandise, to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed, and A must make compensation.

Effect of failure to perform at fixed time, in contract in which time is essential.

55. When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

Effect of such failure when time is not essential.

If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of acceptance of performance at time other

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the

[1] *See* s. 73, *infra*.

promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance he gives notice to the promisor of his intention to do so.[1] than that agreed upon.

56. An agreement to do an act impossible in itself is void. Agreement to do impossible act.

A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.[2] Contract to do act afterwards becoming impossible or unlawful.

Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise. Compensation for loss through non-performance of act known to be impossible or unlawful.

Illustrations.

(*a*) A agrees with B to discover treasure by magic. The agreement is void.

(*b*) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

(*c*) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy. A must make compensation to B for the loss caused to her by the non-performance of his promise.

(*d*) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.

(*e*) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions become void.

57. Where persons reciprocally promise, firstly, to do certain things which are legal, and, secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement. Reciprocal promise to do things legal, and also other things illegal.

Illustration.

A and B agree that A shall sell B a house for 10,000 rupees, but that, if B uses it as a gambling house, he shall pay A 50,000 rupees for it.

The first set of reciprocal promises, namely, to sell the house and to pay 10,000 rupees for it, is a contract.

The second set is for an unlawful object, namely, that B may use the house as a gambling house, and is a void agreement.

58. In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced. Alternative promise, one branch being illegal.

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[1] Compare ss. 62 and 63, *infra*.

[2] *See* s. 65, *infra*. And *see* the Specific Relief Act, 1877 (I of 1877), s. 13, *infra*.

Illustration.

A and B agree that A shall pay B 1,000 rupees for which B shall afterwards deliver to A either rice or smuggled opium.

This is a valid contract to deliver rice, and a void agreement as to the opium.

Appropriation of Payments.

Application of payment where debt to be discharged is indicated.

59. Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Illustrations.

(*a*) A owes B, among other debts, 1,000 rupees upon a promissory note which falls due on the first June. He owes B no other debt of that amount. On the first June A pays to B 1,000 rupees. The payment is to be applied to the discharge of the promissory note.

(*b*) A owes to B, among other debts, the sum of 567 rupees. B writes to A and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

Application of payment where debt to be discharged is not indicated.

60. Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

Application of payment where neither party appropriates.

61. Where neither party makes any appropriation the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

Contracts which need not be performed.

Effect of novation, rescission and alteration of contract.

62. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Illustrations.

(*a*) A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(*b*) A owes B 10,000 rupees. A enters into an arrangement with B, and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old.

(*c*) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees. B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered to.

(*Chapter IV.—Of the Performance of Contracts.*)

Promisee may dispense with or remit performance of promise.

63. Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance,[1] or may accept instead of it any satisfaction which he thinks fit.

Illustrations.

(*a*) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

(*b*) A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

(*c*) A owes B 5,000 rupees. C pays to B 1,000 rupees, and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.[2]

(*d*) A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A without ascertaining the amount gives to B, and B, in satisfaction thereof, accepts, the sum of 2,000 rupees. This is a discharge of the whole debt, whatever may be its amount.

(*e*) A owes B 2,000 rupees, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a [composition][3] of eight annas in the rupee upon their respective demands. Payment to B of 1,000 rupees is a discharge of B's demand.

Consequences of rescission of voidable contract.

64. When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.[4]

Obligation of person who has received advantage under void agreement or contract that becomes void.

65. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

Illustrations.

(*a*) A pays B 1,000 rupees in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the 1,000 rupees.

(*b*) A contracts with B to deliver to him 250 maunds of rice before the first of May. A delivers 130 maunds only before that day, and none after. B retains the 130 maunds after the first of May. He is bound to pay A for them.

(*c*) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her a hundred rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B must pay A for the five nights on which she had sung.

(*d*) A contracts to sing for B at a concert for 1,000 rupees, which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of the profits which B would have made if A had been able to sing, but must refund to B the 1,000 rupees paid in advance.

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[1] But *see* s. 135, *infra*.

[2] *See* s. 41, *supra*.

[3] "Composition" was substituted for "compensation" by Act XII of 1891, s. 2, General Acts, Vol. IV.

[4] *See* s. 75, *infra*.

Mode of communicating or revoking rescission of voidable contract.

66. The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal.[1]

Effect of neglect of promisee to afford promisor reasonable facilities for performance.

67. If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Illustration.

A contracts with B to repair B's house.

B neglects or refuses to point out to A the places in which his house requires repair.

A is excused for the non-performance of the contract if it is caused by such neglect or refusal.

CHAPTER V.

OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT.

Claim for necessaries supplied to person incapable of contracting, or on his account.

68. If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Illustrations.

(*a*) A supplies B, a lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

(*b*) A supplies the wife and children of B, a lunatic, with necessaries suitable to their condition in life. A is entitled to be reimbursed from B's property.

Reimbursement of person paying money due by another in payment of which he is interested.

69. A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

Illustration.

B holds land in Bengal, on a lease granted by A, the zamindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

Obligation of person enjoying benefit of non-gratuitous act.

70. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.[2]

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[1] *See* ss. 3 and 5, *supra.*

[2] As to suits by minors under s. 70 in Presidency Small Cause Courts, *see* the Presidency Small Cause Courts Act, 1882 (XV of 1882), s. 32, General Acts, Vol. III.

(*Chapter V.—Of certain Relations resembling those created by Contract.*
Chapter VI.—Of the Consequences of Breach of Contract.)

Illustrations.

(*a*) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

(*b*) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

Responsibility of finder of goods.

71. A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee.[1]

Liability of person to whom money is paid, or thing delivered by mistake or under coercion.

72. A person to whom money has been paid, or anything delivered, by mistake or under coercion,[2] must repay or return it.

Illustrations.

(*a*) A and B jointly owe 100 rupees to C. A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(*b*) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

CHAPTER VI.

Of the Consequences of Breach of Contract.

Compensation for loss or damage caused by breach of contract.

73. When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract.

When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

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[1] *See* ss. 151 and 152, *infra*. As to definition of "bailee," *see* s. 148, *infra*.

[2] For definition of "coercion," *see* s. 15, *supra*.

(Chapter VI.—Of the Consequences of Breach of Contract.)

Illustrations.

(*a*) A contracts to sell and deliver 50 maunds of saltpetre to B, at a certain price to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(*b*) A hires B's ship to go to Bombay, and there take on board, on the first of January, a cargo which A is to provide and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

(*c*) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(*d*) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of the breach of promise.

(*e*) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur, for sale at that place, starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

(*f*) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.

(*g*) A contracts to let his ship to B for a year, from the first of January, for a certain price. Freights rise, and, on the first of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the first of January.

(*h*) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract price of the iron and the sum for which A could have obtained and delivered it.

(*i*) A delivers to B, a common carrier, a machine, to be conveyed, without delay, to A's mill informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

(*j*) A, having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B, in consequence, rescinds the contract. C must pay to A 20,000 rupees, being the profit which A would have made by the performance of his contract with B.

(*k*) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and, in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(*l*) A, a builder, contracts to erect and finish a house by the first of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January, it falls down and has to be re-built by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house, for the rent lost, and for the compensation made to C.

(*m*) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

(*n*) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B in consequence of not receiving the money on that day is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(*o*) A contracts to deliver 50 maunds of saltpetre to B on the first of January, at a certain price. B afterwards, before the first of January, contracts to sell the saltpetre to C at a price higher than the market price of the first of January. A breaks his promise. In estimating the compensation payable by A to B, the market price of the first of January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.

(*p*) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill.

(*q*) A contracts to sell and deliver to B, on the first of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed time, and too late to be used that year in making caps. B is entitled to receive from A, by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(*r*) A, a ship-owner, contracts with B to convey him from Calcutta to Sydney in A's ship, sailing on the first of January, and B pays to A, by way of deposit, one-half of his passage-money. The ship does not sail on the first of January, and B, after being, in consequence, detained in Calcutta for some time, and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. A is liable to repay to B his deposit, with interest, and the expense to which he is put by his detention in Calcutta, and the excess, if any, of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

Compensation for breach of contract where penalty stipulated for.

74. [1] When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

[1]*Explanation.*—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

Exception.—When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the Government of India or

[1] These paragraphs were substituted for the first para. of s. 74, by the Indian Contract Act Amendment Act, 1899 (VI of 1899), s. 4, General Acts, Vol. V.

of any Local Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

Illustrations.

(*a*) A contracts with B to pay B Rs. 1,000, if he fails to pay B Rs. 500 on a given day. A fails to pay B Rs. 500 on that day. B is entitled to recover from A such compensation, not exceeding Rs. 1,000, as the Court considers reasonable.

(*b*) A contracts with B that, if A practises as a surgeon within Calcutta, he will pay B Rs. 5,000. A practises as a surgeon in Calcutta. B is entitled to such compensation, not exceeding Rs. 5,000, as the Court considers reasonable.

(*c*) A gives a recognizance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

[1] (*d*) A gives B a bond for the repayment of Rs. 1,000 with interest at 12 per cent. at the end of six months, with a stipulation that in case of default, interest shall be payable at the rate of 75 per cent. from the date of default. This is a stipulation by way of penalty, and B is only entitled to recover from A such compensation as the Court considers reasonable.

[1] (*e*) A, who owes money to B, a money-lender, undertakes to repay him by delivering to him 10 maunds of grain on a certain date, and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 maunds. This is a stipulation by way of penalty, and B is only entitled to reasonable compensation in case of breach.

[1] (*f*) A undertakes to repay B a loan of Rs. 1,000 by five equal monthly instalments with a stipulation that, in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

[1] (*g*) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty.

Party rightfully rescinding contract entitled to compensation.

75. A person who rightly rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

Illustration.

A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

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[1] Ills. (*d*), (*e*), (*f*) and (*g*) were inserted by the Indian Contract Act Amendment Act, 1899 (VI of 1899), s. 4 (*2*), General Acts, Vol. V.

CHAPTER VII.

SALE OF GOODS.

When Property in Goods sold passes.

"Goods" defined.

76. In this chapter, the word "goods" means and includes every kind of moveable property.

"Sale" defined.

77. "Sale" is the exchange of property for a price. It involves the transfer of the ownership of the thing sold from the seller to the buyer.

Sale how effected.

78. Sale is effected by offer and acceptance of ascertained goods for a price,

or of a price for ascertained goods,

together with payment of the price or delivery of the goods; or with tender, part-payment, earnest or part-delivery; or with an agreement, express or implied, that the payment or delivery, or both, shall be postponed.

Where there is a contract for the sale of ascertained goods, the property in the goods sold passes to the buyer when the whole or part of the price or when the earnest is paid or when the whole or part of the goods is delivered.

If the parties agree, expressly or by implication, that the payment or delivery, or both, shall be postponed, the property passes as soon as the proposal for sale is accepted.

Illustrations.

(*a*) B offers to buy A's horse for 500 rupees. A accepts B's offer, and delivers the horse to B. The horse becomes B's property on delivery.

(*b*) A sends goods to B, with the request that he will buy them at a stated price if he approves of them or return them if he does not approve of them. B retains the goods and informs A that he approves of them. The goods become B's when B retains them.

(*c*) B offers A for his horse 1,000 rupees, the horse to be delivered to B on a stated day, and the price to be paid on another stated day. A accepts the offer. The horse becomes B's as soon as the proposal is accepted.

(*d*) B offers A for his horse 1,000 rupees on a month's credit. A accepts the offer. The horse becomes B's as soon as the offer is accepted.

(*e*) B, on the first January, offers to A for a quantity of rice 2,000 rupees, to be paid on the first March following, the rice not to be taken away till paid for. A accepts the offer. The rice becomes B's as soon as the offer is accepted.

Transfer of ownership of thing sold, which has yet to be ascertained, made or finished.

79. Where there is a contract for the sale of a thing which has yet to be ascertained, made or finished, the ownership of the thing is not transferred to the buyer, until it is ascertained, made or finished.

Illustration.

B orders A, a barge-builder, to make him a barge. The price is not made payable by instalments. While the barge is building, B pays to A money from time to time on account of the price. The ownership of the barge does not pass to B until it is finished.

Completion of sale of goods which the seller is to put into state in which buyer is to take them.

80. Where, by a contract for the sale of goods, the seller is to do anything to them for the purpose of putting them into a state in which the buyer is to take them, the sale is not complete until such thing has been done.

Illustration.

A, a ship-builder, contracts to sell to B, for a stated price, a vessel which is lying in A's yard; the vessel to be rigged and fitted for a voyage, and the price to be paid on delivery. Under the contract, the property in the vessel does not pass to B until the vessel has been rigged, fitted up and delivered.

Completion of sale of goods when seller has to do anything thereto in order to ascertain price.

81. Where anything remains to be done to the goods by the seller for the purpose of ascertaining the amount of the price, the sale is not complete until this has been done.

Illustrations.

(*a*) A, the owner of a stack of bark, contracts to sell it to B, weigh and deliver it, at 100 rupees per ton. B agrees to take and pay for it on a certain day. Part is weighed and delivered to B; the ownership of the residue is not transferred to B until it has been weighed pursuant to the contract.

(*b*) A contracts to sell a heap of clay to B at a certain price per ton. B is, by the contract, to load the clay in his own carts and to weigh each load at a certain weighing machine, which his carts must pass on their way from A's ground to B's place of deposit. Here nothing more remains to be done by the seller; the sale is complete, and the ownership of the heap of clay is transferred at once.

Completion of sale when goods are unascertained at date of contract.

82. Where the goods are not ascertained at the time of making the contract of sale, it is necessary to the completion of the sale that the goods shall be ascertained.[1]

Illustration.

A agrees to sell to B 20 tons of oil in A's cisterns. A's cisterns contain more than 20 tons of oil. No portion of the oil has become the property of B.

Ascertainment of goods by subsequent appropriation.

83. Where the goods are not ascertained at the time of making the agreement for sale but goods answering the description in the agreement are subsequently appropriated by one party for the purpose of the agreement, and that appropriation is assented to by the other, the goods have been ascertained, and the sale is complete.

Illustration.

A, having a quantity of sugar in bulk, more than sufficient to fill 20 hogsheads, contracts to sell B 20 hogsheads of it. After the contract, A fills 20 hogsheads with the sugar, and gives notice to B that the hogsheads are ready, and requires him to take them away. B says he will take them as soon as he can. By this appropriation by A, and assent by B, the sugar becomes the property of B.

Ascertainment of goods by

84. Where the goods are not ascertained at the time of making the contract of sale, and by the terms of the contract the seller is to do

[1] *See* s. 79, *supra.*

an act with reference to the goods which cannot be done until they are appropriated to the buyer, the seller has a right to select any goods answering to the contract, and by his doing so the goods are ascertained. seller's selection.

Illustration.

B agrees with A to purchase of him, at a stated price to be paid on a fixed day, 50 maunds of rice, out of a larger quantity in A's granary. It is agreed that B shall send sacks for the rice, and that A shall put the rice into them. B does so, and A puts 50 maunds of rice into the sacks. The goods have been ascertained.

85. Where an agreement is made for the sale of immoveable and moveable property combined, the ownership of the moveable property does not pass before the transfer of the immoveable property. Transfer of ownership of moveable property, when sold together with immoveable.

Illustration.

A agrees with B for the sale of a house and furniture. The ownership of the furniture does not pass to B until the house is conveyed to B.

86. When goods have become the property of the buyer, he must bear any loss arising from their destruction or injury. Buyer to bear loss after goods have become his property.

Illustrations.

(*a*) B offers, and A accepts, 100 rupees for a stack of firewood standing on A's premises, the firewood to be allowed to remain on A's premises till a certain day, and not to be taken away till paid for. Before payment, and while the firewood is on A's premises, it is accidentally destroyed by fire. B must bear the loss.

(*b*) A bids 1,000 rupees for a picture at a sale by auction. After the bid, it is injured by an accident. If the accident happens before the hammer falls, the loss falls on the seller; if afterwards, on A.

87. When there is a contract for the sale of goods not yet in existence, the ownership of the goods may be transferred by acts done, after the goods are produced in pursuance of the contract, by the seller, or by the buyer with the seller's assent. Transfer of ownership of goods agreed to be sold while non-existent.

Illustrations.

(*a*) A contracts to sell to B, for a stated price, all the indigo which shall be produced at A's factory during the ensuing year. A, when the indigo has been manufactured, gives B an acknowledgment that he holds the indigo at his disposal. The ownership of the indigo vests in B from the date of the acknowledgment.

(*b*) A, for a stated price, contracts that B may take and sell any crops that shall be grown on A's land in succession to the crops then standing. Under this contract B, with the assent of A, takes possession of some crops grown in succession to the crops standing at the time of the contract. The ownership of the crops, when taken possession of, vests in B.

(*c*) A, for a stated price, contracts that B may take and sell any crops that shall be grown on his land in succession to the crop then standing. Under this contract, B applies to A for possession of some crops grown in succession to the crops which were standing at the time of the contract. A refuses to give possession. The ownership of the crops has not passed to B, though A may commit a breach of contract in refusing to give possession.

88. A contract for the sale of goods to be delivered at a future day is binding, though the goods are not in the possession of the seller at Contract to sell and deliver, at a

future day goods not in seller's possession at date of contract.

the time of making the contract, and though at that time he has no reasonable expectation of acquiring them otherwise than by purchase.

Illustration.

A contracts, on the first January, to sell B 50 shares in the East Indian Railway Company, to be delivered and paid for on the first March of the same year. A, at the time of making the contract, is not in possession of any shares. The contract is valid.

Determination of price not fixed by contract.

89. Where the price of goods sold is not fixed by the contract of sale, the buyer is bound to pay the seller such a price as the Court considers reasonable.

Illustration.

B, living at Patna, orders of A, a coach-builder at Calcutta, a carriage of a particular description. Nothing is said by either as to the price. The order having been executed, and the price being in dispute between the buyer and the seller, the Court must decide what price it considers reasonable.

Delivery.

Delivery how made.

90. Delivery of goods sold may be made by doing anything which has the effect of putting them in the possession of the buyer, or of any person authorized to hold them on his behalf.

Illustrations.

(*a*) A sells to B a horse, and causes or permits it to be removed from A's stables to B's. The removal to B's stable is a delivery.

(*b*) B, in England, orders 100 bales of cotton from A, a merchant of Bombay, and sends his own ship to Bombay for the cotton. The putting the cotton on board the ship is a delivery to B.

(*c*) A sells to B certain specific goods which are locked up in a godown. A gives B the key of the godown, in order that he may get the goods. This is a delivery.

(*d*) A sells to B five specific casks of oil. The oil is in the warehouse of A. B sells the five casks to C. A receives warehouse rent for them from C. This amounts to a delivery of the oil to C, as it shows an assent on the part of A to hold the goods as warehouseman of C.

(*e*) A sells to B 50 maunds of rice in the possession of C, a warehouseman. A gives B an order to C to transfer the rice to B, and C assents to such order, and transfers the rice in his books to B. This is a delivery.

(*f*) A agrees to sell B five tons of oil, at 1,000 rupees per ton, to be paid for at the time of delivery. A gives to C, a wharfinger, at whose wharf he had twenty tons of the oil, an order to transfer five of them into the name of B. C makes the transfer in his books, and gives A's clerk a notice of the transfer for B. A's clerk takes the transfer notice to B, and offers to give it him on payment of the price of the oil. B refuses to pay. There has been no delivery to B, as B never assented to make C his agent to hold for him the five tons selected by A.

Effect of delivery to wharfinger or carrier.

91. A delivery to a wharfinger or carrier of the goods sold has the same effect as a delivery to the buyer, but does not render the buyer liable for the price of goods which do not reach him, unless the delivery is so made as to enable him to hold the wharfinger or carrier responsible for the safe custody or delivery of the goods.

Illustration.

B, at Agra, orders of A, who lives at Calcutta, three casks of oil to be sent to him by railway. A takes three casks of oil directed to B to the railway station and leaves them there without conforming to the rules which must be complied with in order to render the Railway Company responsible for their safety. The goods do not reach B. There has not been a sufficient delivery to charge B in a suit for the price.

Effect of part delivery.

92. A delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

Illustrations.

(*a*) A ship arrives in a harbour laden with a cargo consigned to A, the buyer of the cargo. The captain begins to discharge it, and delivers over part of the goods to A in progress of the delivery of the whole. This is a delivery of the cargo to A for the purpose of passing the property in the cargo.

(*b*) A sells to B a stack of firewood, to be paid for by B on delivery. After the sale, B applies for and obtains from A leave to take away some of the firewood. This has not the legal effect of delivery of the whole.

(*c*) A sells 50 maunds of rice to B. The rice remains in A's warehouse. After the sale, B sells to C 10 maunds of the rice, and A, at B's desire, sends the 10 maunds to C. This has not the legal effect of a delivery of the whole.

Seller not bound to deliver until buyer applies for delivery.

93. In the absence of any special promise, the seller of goods is not bound to deliver them until the buyer applies for delivery.

Place of delivery

94. In the absence of any special promise as to delivery, goods sold are to be delivered at the place at which they are at the time of the sale; and goods contracted to be sold are to be delivered at the place at which they are at the time of the contract for sale, or, if not then in existence, at the place at which they are produced.

Seller's Lien.

Seller's lien.

95. Unless a contrary intention appears by the contract, a seller has a lien on sold goods as long as they remain in his possession and the price or any part of it remains unpaid.

Lien where payment to be made at a future day, but no time fixed for delivery.

96. Where, by the contract, the payment is to be made at a future day, but no time is fixed for the delivery of the goods, the seller has no lien, and the buyer is entitled to a present delivery of the goods without payment. But if the buyer becomes insolvent before delivery of the goods, or if the time appointed for payment arrives before the delivery of the goods, the seller may retain the goods for the price.

"Insolvency" defined.

Explanation.—A person is insolvent who has ceased to pay his debts in the usual course of business, or who is incapable of paying them.

Illustration.

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse. Before the expiry of the three months, B becomes insolvent. A may retain the goods for the price.

Seller's lien where payment to be made at future day, and buyer allows goods to remain in seller's possession.

97. Where, by the contract, the payment is to be made at a future day, and the buyer allows the goods to remain in the possession of the seller until that day and does not then pay for them, the seller may retain the goods for the price.

Illustration.

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse till the expiry of the three months, and then does not pay for them. A may retain the goods for the price.

Seller's lien against subsequent buyer.

98. A seller in possession of goods sold may retain them for the price against any subsequent buyer, unless the seller has recognized the title of the subsequent buyer.

Stoppage in Transit.

Power of seller to stop in transit.

99. A seller who has parted with the possession of the goods, and has not received the whole price, may, if the buyer becomes insolvent, stop the goods while they are in transit to the buyer.

When goods are to be deemed in transit.

100. Goods are to be deemed in transit while they are in the possession of the carrier, or lodged at any place in the course of transmission to the buyer, and are not yet come into the possession of the buyer or any person on his behalf, otherwise than as being in possession of the carrier, or as being so lodged.

Illustrations.

(*a*) B, living at Madras, orders goods of A, at Patna, and directs that they shall be sent to Madras. The goods are sent to Calcutta, and there delivered to C, a wharfinger, to be forwarded to Madras. The goods, while they are in the possession of C, are in transit.

(*b*) B, at Delhi, orders goods of A, at Calcutta. A consigns and forwards the goods to B at Delhi. On arrival there, they are taken to the warehouse of B, and left there. B refuses to receive them, and immediately afterwards stops payment. The goods are in transit.

(*c*) B, who lives at Puna, orders goods of A at Bombay. A sends them to Puna by C, a carrier appointed by B. The goods arrive at Puna and are placed by C, at B's request, in C's warehouse for B. The goods are no longer in transit.

(*d*) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. The transit is at an end when the cotton is delivered on board the ship.

(*e*) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. A delivers the cotton on board the ship, and takes bills of lading from the master, making the cotton deliverable to A's order or assigns. The cotton arrives at London, but, before coming into B's possession, B becomes insolvent. The cotton has not been paid for. A may stop the cotton.

101. The seller's right of stoppage, does not, except in the cases hereinafter mentioned, cease on the buyer's reselling the goods while in transit, and receiving the price, but continues until the goods have been delivered to the second buyer, or to some person on his behalf. Continuance of right of stoppage.

102. The right of stoppage ceases if the buyer, having obtained a bill of lading or other document showing title to the goods,[1] assigns it, while the goods are in transit, to a second buyer, who is acting in good faith, and who gives valuable consideration for them. Cessation of right on assignment by buyer of bill of lading.

Illustrations.

(*a*) A sells and consigns certain goods to B, and sends him the bill of lading. A being still unpaid, B becomes insolvent, and, while the goods are in transit, assigns the bill of lading for cash to C, who is not aware of his insolvency. A cannot stop the goods in transit.

(*b*) A sells and consigns certain goods to B. A being still unpaid, B becomes insolvent, and, while the goods are still in transit, assigns the bill of lading for cash to C, who knows that B is insolvent. The assignment not being in good faith, A may still stop the goods in transit.

103. Where a bill of lading or other instrument of title to any goods is assigned by the buyer of such goods by way of pledge, to secure an advance made specifically upon it, in good faith, the seller cannot, except on payment or tender to the pledgee of the advance so made, stop the goods in transit. Stoppage where bill of lading is pledged to secure specific advance.

Illustrations.

(*a*) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these goods to C, to secure a specific advance of 5,000 rupees made to him upon the bill of lading by C. B becomes insolvent, being indebted to C to the amount of 9,000 rupees. A is not entitled to stop the goods except on payment or tender to C of 5,000 rupees.

(*b*) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these goods to C, to secure the sum of 5,000 rupees due from him to C, upon a general balance of account. B becomes insolvent. A is entitled to stop the goods in transit without payment or tender to C of the 5,000 rupees.

104. The seller may effect stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other depositary in whose possession they are. Stoppage how effected.

105. Such notice may be given, either to the person who has the immediate possession of the goods, or to the principal whose servant has possession. In the latter case, the notice must be given at such a time, and under such circumstances, that the principal, by the exercise of reasonable diligence, may communicate it to his servant in time to prevent a delivery to the buyer. Notice of seller's claim.

106. Stoppage in transit entitles the seller to hold the goods stopped until the price of the whole of the goods sold is paid. Right of seller on stoppage

[1] *See* s. 108, *exception 1, infra.*

Illustration.

A sells to B 100 bales of cotton; 60 bales having come into B's possession, and 40 being still in transit, B becomes insolvent, and A, being still unpaid, stops the 40 bales in transit. A is entitled to hold the 40 bales until the price of the 100 bales is paid.

Resale.

Resale on buyer's failure to perform.

107. Where the buyer of goods fails to perform his part of the contract, either by not taking the goods sold to him, or by not paying for them, the seller, having a lien on the goods, or having stopped them in transit, may, after giving notice to the buyer of his intention to do so, resell them, after the lapse of a reasonable time, and the buyer must bear any loss, but is not entitled to any profit which may occur on such resale.

Title.

Title conveyed by seller of goods to buyer.

108. No seller can give to the buyer of goods a better title to those goods than he has himself, except in the following cases:—

Exception 1.—When any person is, by the consent of the owner, in possession of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate or warrant or order for delivery, or other document showing title to goods, he may transfer the ownership of the goods of which he is so in possession, or to which such documents relate, to any other person, and give such person a good title thereto, notwithstanding any instructions of the owner to the contrary: Provided that the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods or documents has no right to sell the goods.

Exception 2.—If one of several joint-owners of goods has the sole possession of them by the permission of the co-owners, the ownership of the goods is transferred to any person who buys them of such joint-owner in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods has no right to sell them.

Exception 3.—When a person has obtained possession of goods under a contract voidable at the option of the other party thereto, the ownership of the goods is transferred to a third person who, before the contract is rescinded, buys them in good faith of the person in possession; unless the circumstances which render the contract voidable amounted to an offence committed by the person in possession or those whom he represents.

In the case the original seller is entitled to compensation from the original purchaser for any loss which the seller may have sustained by being prevented from rescinding the contract.

Illustrations.

(*a*) A buys from B, in good faith, a cow which B had stolen from C. The property in the cow is not transferred to A.

(*b*) A, a merchant, entrusts B, his agent, with a bill of lading relating to certain goods, and instructs B not to sell the goods for less than a certain price, and not to give credit to D. B sells the goods to D for less than that price, and gives D three months' credit. The property in the goods passes to D.

(*c*) A sells to B goods of which he has the bill of lading, but the bill of lading is made out for delivery of the goods to C, and it has not been endorsed by C. The property is not transferred to B.

(*d*) A, B and C are joint Hindu brothers, who own certain cattle in common. A is left by B and C in possession of a cow, which he sells to D. D purchases *bonâ fide*. The property in the cow is transferred to D.

(*e*) A, by a misrepresentation not amounting to cheating, induces B to sell and deliver to him a horse. A sells the horse to C before B has rescinded the contract. The property in the horse is transferred to C; and B is entitled to compensation from A for any loss which B has sustained by being prevented from rescinding the contract.

(*f*) A compels by a wrongful intimidation, or induces him by cheating or forgery, to sell him a horse, and before B rescinds the contract, sells the horse to C. The property is not transferred to C.

Warranty.

Seller's responsibility for badness of title.

109. If the buyer, or any person claiming under him, is, by reason of the invalidity of the seller's title, deprived of the thing sold, the seller is responsible to the buyer, or the person claiming under him, for loss caused thereby, unless a contrary intention appears by the contract.

Establishment of implied warranty of goodness or quality.

110. An implied warranty of goodness or quality may be established by the custom of any particular trade.

Warranty of soundness implied on sale of provisions.

111. On the sale of provisions, there is an implied warranty that they are sound.

Warranty of bulk implied on sale of goods by sample.

112. On the sale of goods by sample, there is an implied warranty that the bulk is equal in quality to the sample.

Warranty implied where goods are sold as being of a certain denomination.

113. Where goods are sold as being of a certain denomination, there is an implied warranty that they are such goods as are commercially known by that denomination, although the buyer may have bought them by sample, or after inspection of the bulk.

Explanation.—But if the contract specifically states that the goods, though sold as of a certain denomination, are not warranted to be of that denomination, there is no implied warranty.

Illustrations.

(*a*) A, at Calcutta, sells to B twelve bags of "waste silk," then on its way from Murshedabad to Calcutta. There is an implied warranty by A that the silk shall be such as is known in the market under the denomination of "waste silk."

(*b*) A buys, by sample and after having inspected the bulk, 100 bales of "Fair Bengal" cotton. The cotton proves not to be such as is known in the market as "Fair Bengal" : there is a breach of warranty.

Warranty where goods ordered for a specified purpose.

114. Where goods have been ordered for a specified purpose, for which goods of the denomination mentioned in the order are usually sold, there is an implied warranty by the seller that the goods supplied are fit for that purpose.

Illustration.

B orders of A, a copper manufacturer, copper for sheathing a vessel. A, on this order, supplies copper. There is an implied warranty that the copper is fit for sheathing a vessel.

Warranty on sale of articles of well-known ascertained kind.

115. Upon the sale of an article of a well-known ascertained kind, there is no implied warranty of its fitness for any particular purpose.

Illustration.

B writes to A, the owner of a patent invention for cleaning cotton—"Send me your patent cotton-cleaning machine to clean the cotton at my factory." A sends the machine according to order. There is an implied warranty by A that it is the article known as A's patent cotton-cleaning machine, but none that it is fit for the particular purpose of cleaning the cotton at B's factory.

Seller when not responsible for latent defect.

116. In the absence of fraud and of any express warranty of quality, the seller of an article which answers the description under which it was sold is not responsible for a latent defect in it.

Illustration.

A sells to B a horse. It turns out that the horse had, at the time of the sale, a defect of which A was unaware. A is not responsible for this.

Buyer's right on breach of warranty.

117. Where a specific article sold with a warranty has been delivered and accepted, and the warranty is broken, the sale is not thereby rendered voidable, but the buyer is entitled to compensation from the seller for loss caused by the breach of warranty.

Illustration.

A sells and delivers to B a horse warranted sound. The horse proves to have been unsound at the time of sale. The sale is not thereby rendered voidable, but B is entitled to compensation from A for loss caused by the unsoundness.

Right of buyer on breach of warranty in respect of goods not ascertained.

118. Where there has been a contract, with a warranty, for the sale of goods which, at the time of the contract, were not ascertained or not in existence, and the warranty is broken, the buyer may

accept the goods or refuse to accept the goods when tendered,

or keep the goods for a time reasonably sufficient for examining and trying them, and then refuse to accept them; provided that during such time he exercises no other act of ownership over them than is necessary for the purpose of examination and trial.

In any case the buyer is entitled to compensation from the seller for any loss caused by the breach of warranty; but, if he accepts the goods and intends to claim compensation, he must give notice of his intention to do so within a reasonable time after discovering the breach of the warranty.

Illustrations.

(*a*) A agrees to sell and, without application on B's part, deliver to B 200 bales of unascertained cotton by sample. Cotton not in accordance with sample is delivered to B. B may return it if he has not kept it longer than a reasonable time for the purpose of examination.

(*b*) B agrees to buy of A twenty-five sacks of flour by sample. The flour is delivered to B, who pays the price. B, upon examination, finds it not equal to sample; B afterwards uses two sacks, and sells one. He cannot now rescind the contract and recover the price, but he is entitled to compensation from A for any loss caused by the breach of warranty.

(*c*) B makes two pairs of shoes for A by A's order. When the shoes are delivered, they do not fit A. A keeps both pairs for a day. He wears one pair for a short time in the house, and takes a long walk out of doors in the other pair. He may refuse to accept the first pair, but not the second. But he may recover compensation for any loss sustained by the defect of the second pair.

Miscellaneous.

119. When the seller sends to the buyer goods not ordered with goods ordered, the buyer may refuse to accept any of the goods so sent, if there is risk or trouble in separating the goods ordered from the goods not ordered.

When buyer may refuse to accept, if goods not ordered are sent with goods ordered.

Illustration.

A orders of B specific articles of China. B sends these articles to A in a hamper, with other articles of China which had not been ordered. A may refuse to accept any of the goods sent.

120. If a buyer wrongfully refuses to accept the goods sold to him, this amounts to a breach of the contract of sale.

Effect of wrongful refusal to accept.

121. When goods sold have been delivered to the buyer, the seller is not entitled to rescind the contract on the buyer's failing to pay the price at the time fixed unless it was stipulated by the contract that he should be so entitled.

Right of seller as to rescission on failure of buyer to pay price at time fixed.

122. Where goods are sold by auction, there is a distinct and separate sale of the goods in each lot, by which the ownership thereof is transferred as each lot is knocked down.

Sale and transfer of lots sold by auction.

123. If, at a sale by auction, the seller makes use of pretended biddings to raise the price, the sale is voidable at the option of the buyer.

Effect of use by seller of pretended biddings to raise price.

CHAPTER VIII.

OF INDEMNITY AND GUARANTEE.

"Contract of indemnity" defined.

124. A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity."

Illustration.

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

Rights of indemnity-holder when sued.

125. The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor—

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;

(2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit;

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to made in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit.

"Contract of guarantee," "surety," "principal debtor," and "creditor".

126. A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor," and the person to whom the guarantee is given is called the "creditor." A guarantee may be either oral or written.

Consideration or guarantee.

127. Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee.

Illustrations.

(*a*) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.

(*b*) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

(*c*) A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

(*Chapter VIII.—Of Indemnity and Guarantee.*)

128. The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract. Surety's liability.

Illustration.

A guarantees to B the payment of a bill of exchange by C, the accepter. The bill is dishonoured by C. A is liable not only for the amount of the bill but also for any interest and charges which may have become due on it.

129. A guarantee which extends to a series of transactions is called 'continuing guarantee." "Continuing guarantee."

Illustrations.

(*a*) A, in consideration that B will employ C in collecting the rent of B's zamindari, promises B to be responsible, to the amount of 5,000 rupees, for the due collection and payment by C of those rents. This is a continuing guarantee.

(*b*) A guarantees payment to B, a tea-dealer, to the amount of £100, for any tea he may from time to time supply to C. B supplies C with tea to above the value of £100, and C pays B for it. Afterwards B supplies C with tea to the value of £200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of £100.

(*c*) A guarantees payment to B of the price of five sacks of flour to be delivered by B to C and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

130. A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor. Revocation of continuing guarantee.

Illustrations.

(*a*) A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B, for twelve months, the due payment of all such bills to the extent of 5,000 rupees. B discounts bills for C to the extent of 2,000 rupees. Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 2,000 rupees, on default of C.

(*b*) A guarantees to B, to the extent of 10,000 rupees, that C shall pay all the bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation. C dishonours the bill at maturity. A is liable upon his guarantee.

131. The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions. Revocation of continuing guarantee by surety's death.

132. Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence. Liability of two persons primarily liable, not affected by arrangement between them that one shall be surety on other's default.

Illustration.

A and B make a joint and several promissory note to C. A makes it, in fact, as surety for B, and C knows this at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.

Discharge of surety by variance in terms of contract.

133. Any variance, made without the surety's consent, in the terms of the contract between the principal and the creditor, discharges the surety as to transactions subsequent to the variance.

Illustrations.

(*a*) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

(*b*) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of the Legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, B misconducts himself. A is discharged by the change from future liability under his guarantee, though the misconduct of B is in respect of a duty not affected by the later Act.

(*c*) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duly accounting for moneys received by him as such clerk. Afterwards, without A's knowledge or consent, C and B agree that B should be paid by a commission on the goods sold by him and not by a fixed salary. A is not liable for subsequent misconduct of B.

(*d*) A gives to C a continuing guarantee to the extent of 3,000 rupees for any oil supplied by C to B on credit. Afterwards B comes embarrassed, and, without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money, and that the payments shall be applied to the then existing debts between B and C. A is not liable on his guarantee for any goods supplied after this new arrangement.

(*e*) C contracts to lend B 5,000 rupees on the 1st March. A guarantees repayment. C pays the 5,000 rupees to B on the 1st January. A is discharged from his liability, as the contract has been varied inasmuch as C might sue B for the money before the 1st of March.

Discharge of surety by release or discharge of principal debtor.

134. The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

Illustrations.

(*a*) A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B, and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C, and A is discharged from his suretyship.

(*b*) A contracts with B to grow a crop of indigo on A's land and to deliver it to B at a fixed rate, and C guarantees A's performance of this contract. B diverts a stream of water which is necessary for irrigation of A's land and thereby prevents him from raising the indigo. C is no longer liable on his guarantee.

(*c*) A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.

Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor.

135. A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

Surety not discharged when agreement made with third person to give time to principal debtor

136. Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

Illustration.

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.

Creditor's forbearance to sue does not discharge surety.

137. Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Illustration.

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

Release of one co-surety does not discharge others.

138. Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties.[1]

Discharge of surety by creditor's act or omission impairing surety's eventual remedy.

139. If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Illustrations.

(*a*) B contracts to build a ship for C for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. A is discharged by this prepayment.

(*b*) C lends money to B on the security of a joint and several promissory note made in C's favour by B, and by A as surety for B, together with a bill of sale of B's furniture, which gives power to C to sell the furniture, and apply the proceeds in discharge of the note. Subsequently, C sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realized. A is discharged from liability on the note.

(*c*) A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see M make up the cash. B omits to see this done as promised, and M embezzles. A is not liable to B on his guarantee.

Rights of surety on payment or performance.

140. Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

Surety's right to benefit of creditor's securities.

141. A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses or, without the consent

[1] *See* s. 44, *supra*.

of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

Illustrations.

(*a*) C advances to B, his tenant, 2,000 rupees on the guarantee of A. C has also a further security for the 2,000 rupees by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

(*b*) C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree, and then, without the knowledge of A, withdraws the execution. A is discharged.

(*c*) A, as surety for B, makes a bond jointly with B to C, to secure a loan from C to B. Afterwards, C obtains from B a further security for the same debt. Subsequently, C gives up the further security. A is not discharged.

Guarantee obtained by misrepresentation invalid.

142. Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

Guarantee obtained by concealment invalid.

143. Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid.

Illustrations.

(*a*) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

(*b*) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

Guarantee on contract that creditor shall not act on it until co-surety joins.

144. Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

Implied promise to indemnify surety.

145. In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Illustrations.

(*a*) B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suit, having reasonable grounds for doing so, but is compelled to pay the amount of the debt with costs. He can recover from B the amount paid by him for costs, as well as the principal debt.

(*b*) C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A to secure the amount. C, the holder of the bill, demands payment of it from A, and, on A's refusal to pay, sues him upon the bill. A, not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from B the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

(*c*) A guarantees to C, to the extent of 2,000 rupees, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than 2,000 rupees, but obtains from A payment of the sum of 2,000 rupees in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied.

Co-sureties liable to contribute equally.

146. Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.[1]

Illustrations.

(*a*) A, B and C are sureties to D for the sum of 3,000 rupees lent to E. E makes default in payment. A, B and C are liable, as between themselves, to pay 1,000 rupees each.

(*b*) A, B and C are sureties to D for the sum of 1,000 rupees lent to E, and there is a contract between A, B and C that A is to be responsible to the extent of one-quarter, B to the extent of one-quarter, and C to the extent of one-half. E makes default in payment. As between the sureties, A is liable to pay 250 rupees, B 250 rupees, and C 500 rupees.

Liability of co-sureties bound in different sums.

147. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

Illustrations.

(*a*) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 30,000 rupees. A, B and C are each liable to pay 10,000 rupees.

(*b*) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 40,000 rupees. A is liable to pay 10,000 rupees, and B and C 15,000 rupees each.

(*c*) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 70,000 rupees. A, B and C have to pay each the full penalty of his bond.

CHAPTER IX.

Of Bailment.

"Bailment," "bailor," and "bailee," defined.

148. A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailor." The person to whom they are delivered is called the "bailee."

[1] *See* s. 43, *supra*.

Explanation.—If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor, of such goods although they may not have been delivered by way of bailment.

Delivery to bailee how made.

149. The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.

Bailor's duty to disclose faults in goods bailed.

150. The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and, if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Illustrations.

(*a*) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

(*b*) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

Care to be taken by bailee.

[1]**151.** In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.[2]

Bailee when not liable for loss, etc., of thing bailed.

[1]**152.** The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.

Termination of bailment by bailee's act inconsistent with conditions.

153. A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.

Illustration.

A lets to B, for hire, a horse for his own riding. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment.

Liability of bailee making

154. If the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make com-

[1] The responsibility of the Trustees of the Port of Madras constituted under Mad. Act II of 1905, in regard to animals or goods has been declared to be that of a bailee, under these sections, without the qualifying words "in the absence of any special contract" in s. 152, *see* s. 41 (*1*) of the Madras Port Trust Act, 1905 (Mad. Act II of 1905).

[2] As to railway contracts, *see* the Indian Railways Act, 1890 (IX of 1890), s. 72, General Acts, Vol. IV. As to the liability of common carriers, *see* s. 8 of the Carriers Act, 1865 (III of 1865), General Acts, Vol. I.

pensation to the bailor for any damage arising to the goods from or during such use of them. unauthorized use of goods bailed.

Illustrations.

(*a*) A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.

(*b*) A hires a horse in Calcutta from B expressly to march to Benares. A rides with due care, but marches to Cuttack instead. The horse accidentally falls and is injured. A is liable to make compensation to B for the injury to the horse.

155. If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced. Effect of mixture, with bailor's consent, of his goods with bailee's.

156. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture. Effect of mixture, without bailor's consent, when the goods can be separated.

Illustration.

A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark : A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales, and any other incidental damage.

157. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods. Effect of mixture without bailor's consent, when the goods cannot be separated.

Illustration.

A bails a barrel of Cape flour worth Rs. 45 to B. B, without A's consent, mixes the flour with country flour of his own, worth only Rs. 25 a barrel. B must compensate A for the loss of his flour.

158. Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment. Repayment by bailor of necessary expenses.

159. The lender of a thing for use may at any time require its return, if the loan was gratuitous, even though he lent it for a specified time or purpose. But, if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, Restoration of goods lent gratuitously.

the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

Return of goods bailed on expiration of time or accomplishment of purpose.

160. It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.

Bailee's responsibility when goods are not duly returned.

[1] **161.** If, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.[2]

Termination of gratuitous bailment by death.

162. A gratuitous bailment is terminated by the death either of the bailor or of the bailee.

Bailor entitled to increase or profit from goods bailed.

163. In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

Illustration.

A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

Bailor's responsibility to bailee.

164. The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods or to give directions, respecting them.

Bailment by several joint owners.

165. If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

Bailee not responsible on re-delivery to bailor without title.

166. If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.[3]

Right of third person claiming goods bailed.

167. If a person, other than the bailor, claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

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[1] S. 161 has been declared to apply to the responsibility of the Trustees of the Port of Madras as to animals and goods in their possession, *see* Madras Port Trust Act, 1905 (Mad. Act II of 1905).

[2] As to railway contracts, see the Indian Railways Act, 1890 (IX of 1890), s. 72, General Acts, Vol. IV.

[3] *See* s. 117 of the Indian Evidence Act, 1872 (I of 1872), *supra*.

Right of finder of goods; may sue for specific reward offered.

168. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and, where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.

When finder of thing commonly on sale may sell it.

169. When a thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—

(1) when the thing is in danger of perishing or of losing the greater part of its value, or,

(2) when the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value.

Bailee's particular lien.

170. Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Illustrations.

(*a*) A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.

(*b*) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give a three months' credit for the price. B is not entitled to retain the coat until he is paid.

General lien of bankers, factors, wharfingers, attorneys and policy-brokers.

171. Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.[1]

Bailments of Pledges.

"Pledge," "pawnor" and "pawnee" defined.

172. The bailment of goods as security for payment of a debt or performance of a promise is called "pledge." The bailor is in this case called the "pawnor." The bailee is called the "pawnee."

Pawnee's right of retainer.

173. The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

[1] As to lien of an agent, *see* s. 221, *infra*. As to lien of Railway Administration, *see* the Indian Railways Act, 1890 (IX of 1890), s. 55, General Acts, Vol. IV.

Pawnee not to retain for debt or promise other than that for which goods pledged. Presumption in case of subsequent advances.

174. The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

Pawnee's right as to extra-ordinary expenses incurred.

175. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

Pawnee's right where pawnor makes default.

176. If the pawnor makes default in payment of the debt, or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

Defaulting pawnor's right to redeem.

177. If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them [1]; but he must, in that case, pay, in addition, any expenses which have arisen from his default.

Pledge by possessor of goods, or of documentary title to goods.

178. A person who is in possesion of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or any other document of title to goods, may make a valid pledge of such goods or documents: Provided that the pawnee acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly:

Provided also that such goods or documents have not been obtained from their lawful owner, or from any person in lawful custody of them, by means of an offence or fraud.

Pledge where pawnor has only a limited interest.

179. Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

[1] For limitation, *see* the Indian Limitation Act, 1908 (IX of 1908), Sch. I, No. 145, General Acts, Vol. VI.

Suits by Bailees or Bailors against Wrong-doers.

Suit by bailor or bailee against wrong-doer.

180. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

Apportionment of relief or compensation obtained by such suits.

181. Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

CHAPTER X.

AGENCY.

Appointment and Authority of Agents.

"Agent" and "principal" defined.

182. An "agent" is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal".

Who may employ agent.

183. Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.[1]

Who may be an agent.

184. As between the principal and third persons any person may become an agent, but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

Consideration not necessary.

185. No consideration is necessary to create an agency.

Agent's authority may be expressed or implied.

186. The authority of an agent may be expressed or implied.[2]

Definitions of express and implied authority.

187. An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

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[1] *Cf.* s. 11, *supra.*

[2] *See*, however, s. 33 of the Indian Registration Act, 1908, General Acts, Vol. VI. *See* also Code of Civil Procedure, 1908 (Act V of 1908), Sch. I, Order III, rule 4, General Acts, Vol. VI.

Illustration.

A owns a shop in Serampur, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

Extent of agent's authority.

188. An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act.

An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

Illustrations.

(*a*) A is employed by B, residing in London, to recover at Bombay a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(*b*) A constitutes B his agent to carry on his business of a ship-builder. B may purchase timber and other materials, and hire workmen, for the purposes of carrying on the business.

Agent's authority in an emergency.

189. An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

Illustrations.

(*a*) An agent for sale may have goods repaired if it be necessary.

(*b*) A consigns provisions to B at Calcutta, with directions to send them immediately to C at Cuttack. B may sell the provisions at Calcutta, if they will not bear the journey to Cuttack without spoiling.

Sub-Agents.

When agent cannot delegate.

190. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must, be employed.

"Sub-agent" defined.

191. A "sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.

Representation of principal by sub-agent properly appointed.

192. Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal.

Agent's responsibility for sub-agent.

The agent is responsible to the principal for the acts of the sub-agent.

Sub-agent's responsibility.

The sub-agent is responsible for his acts to the agent, but not to the principal, except in case of fraud or wilful wrong.

Agent's responsibility for sub-agent appointed without authority.

193. Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons; the principal is not represented by or responsible for the acts of the person so employed, nor is that person responsible to the principal.

Relation between principal and person duly appointed by agent to act in business of agency.

194. Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Illustrations.

(*a*) A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

(*b*) A authorizes B, a merchant in Calcutta, to recover the moneys due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co. for the recovery of the money. D is not a sub-agent, but is solicitor for A.

Agent's duty on naming such person.

195. In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and if he does this he is not responsible to the principal for the acts or negligence of the agent so selected.

Illustrations.

(*a*) A instructs B, a merchant, to buy a ship for him. B employs a ship surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A.

(*b*) A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

Ratification.

Right of person as to acts done for him without his authority.

196. Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority.

Effect of ratification.

Ratification may be expressed or implied.

197. Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

Illustrations.

(*a*) A, without authority, buys goods for B. Afterwards B sells them to C on his own account; B's conduct implies a ratification of the purchase made for him by A.

(*b*) A, without B's authority, lends B's money to C. Afterwards B accepts interest on the money from C. B's conduct implies a ratification of the loan.

Knowledge requisite for valid ratification.

198. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Effect of ratifying unauthorized act forming part of a transaction.

199. A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part.

Ratification of unauthorized act cannot injure third person.

200. An act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

Illustrations.

(*a*) A, not being authorized thereto by B, demands, on behalf of B, the delivery of a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

(*b*) A holds a lease from B, terminable on three months' notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A.

Revocation of Authority.

Termination of agency.

201. An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

Termination of agency where agent has an interest in subject-matter.

202. Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Illustrations.

(*a*) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

(*b*) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself, out of the price, the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.

When principal may revoke agent's authority.

203. The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

Revocation where authority has been partly exercised.

204. The principal cannot revoke the authority given to his agent after the authority has been partly exercised so far as regards such acts and obligations as arise from acts already done in the agency.

Illustrations.

(*a*) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(*b*) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in A's name and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

Compensation for revocation by principal or renunciation by agent.

205. Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation [1] to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

Notice of revocation or renunciation.

206. Reasonable notice must be given of such revocation or renunciation; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

Revocation and renunciation may be expressed or implied.

207. Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

Illustration.

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

When termination of agent's authority takes effect as to agent, and as to third persons.

208. The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

Illustrations.

(*a*) A directs B to sell goods for him, and agrees to give B five per cent. commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B, after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A, and B is entitled to five rupees as his commission.

(*b*) A, at Madras, by letter directs B to sell for him some cotton lying in a warehouse in Bombay, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Madras. B after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

(*c*) A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.

Agent's duty on termination of agency by principal's death or insanity.

209. When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

Termination of sub-

210. The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination

[1] *See* s. 73, *supra*.

agent's authority.

of an agent's authority) of the authority of all sub-agents appointed by him.

Agent's Duty to Principal.

Agent's duty in conducting principal's business.

211. An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

Illustrations.

(*a*) A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investment. A must make good to B the interest usually obtained by such investments.

(*b*) B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

Skill and diligence required from agent.

212. An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill or misconduct.

Illustrations.

(*a*) A, a merchant in Calcutta, has an agent, B, in London to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss—as *e.g.*, by variation of rate of exchange—but not further.

(*b*) A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

(*c*) A, an insurance-broker employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B.

(*d*) A, a merchant in England, directs B, his agent at Bombay, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

Agent's accounts.

213. An agent is bound to render proper accounts to his principal on demand.

Agent's duty to communicate with principal.

214. It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.[1]

Right of principal when agent deals, on his own account, in business of agency without principal's consent.

215. If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Illustrations.

(*a*) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

(*b*) A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allows B to buy, in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

Principal's right to benefit gained by agent dealing on his own account in business of agency.

216. If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Illustration.

A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

Agent's right of retainer out of sums received on principal's account.

217. An agent may retain,[2] out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

Agent's duty to pay sums received for principal.

218. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

When agent's remuneration becomes due.

219. In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of

[1] *See* s. 189, *supra*.
[2] *See* s. 221, *infra*.

such act; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

Agent not entitled to remuneration for business misconducted.

220. An agent who is guilty of misconduct in the business of the agency[1] is not entitled to any remuneration in respect of that part of the business which he has misconducted.

Illustrations.

(*a*) A employs B to recover 1,00,000 rupees from C, and to lay it out on good security. B recovers the 1,00,000 rupees and lays out 90,000 rupees on good security, but lays out 10,000 rupees on security which he ought to have known to be bad, whereby A loses 2,000 rupees. B is entitled to remuneration for recovering the 1,00,000 rupees and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2,000 rupees to B.

(*b*) A employs B to recover 1,000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

Agent's lien on principal's property.

221. In the absence of any contract to the contrary, an agent is entitled to retain goods, papers and other property, whether moveable or immoveable, of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same has been paid or accounted for to him.[2]

Principal's duty to Agent.

Agent to be indemnified against consequences of lawful acts.

222. The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

Illustrations.

(*a*) B, at Singapur, under instructions from A of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit, and A authorizes him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs and expenses.

(*b*) B, a broker at Calcutta, by the orders of A, a merchant there, contracts with C for the purchase of 10 casks of oil for A. Afterwards A refuses to receive the oil, and C sues B. B informs A, who repudiates the contract altogether. B defends, but unsuccessfully, and has to pay damages and costs and incurs expenses. A is liable to B for such damages, costs and expenses.

Agent to be indemnified against consequences of acts done in good faith.

223. Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it cause an injury to the rights of third persons.

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[1] *See, e.g.*, ss. 195, 211, 212, 213, 214, 218, *supra*.

[2] As to the general lien of the agent who is a banker, factor, attorney or policy-broker, *see* s. 171, *supra*.

Illustrations.

(*a*) A, a decree-holder and entitled to execution of B's goods, requires the officer of the Court to seize certain goods, representing them to be the goods of B. The officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum which he is compelled to pay to C, in consequence of obeying A's directions.

(*b*) B, at the request of A, sells goods in the possession of A, but which A had no right to dispose of. B does not know this, and hands over the proceeds of the sale to A. Afterwards C, the true owner of the goods, sues B and recovers the value of the goods and costs. A is liable to indemnify B for what he has been compelled to pay to C and for B's own expenses.

Non-liability of employer of agent to do a criminal act.

224. Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.[1]

Illustrations.

(*a*) A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.

(*b*) B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication, and all costs and damages of any action in respect thereof. B is sued by C and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.

Compensation to agent for injury caused by principal's neglect.

225. The principal must make compensation to his agent in respect of injury[2] caused to such agent by the principal's neglect or want of skill.

Illustration.

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and B is in consequence hurt. A must make compensation to B.

Effect of agency on contract with third persons.

Enforcement and consequences of agent's contracts.

226. Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person.

Illustrations.

(*a*) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot in a suit by the principal set off against that claim a debt due to himself from B.

(*b*) A, being B's agent with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

Principal how far bound when agent exceeds authority.

227. When an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

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[1] *See* s. 24, *supra*.

Cf. the Indian Fatal Accidents Act, 1855 (XIII of 1855), General Acts, Vol. I.

Illustration.

A, being owner of a ship and cargo, authorizes B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

Principal not bound when excess of agent's authority is not separable.

228. Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

Illustration.

A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction.

Consequences of notice given to agent.

229. Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall; as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

Illustrations.

(*a*) A is employed by B to buy from C certain goods, of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set-off a debt owing to him from C against the price of the goods.

(*b*) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set-off against the price of the goods a debt owing to him from C.

Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.

230. In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Presumption of contract to contrary.

Such a contract shall be presumed to exist in the following cases:—

(1) where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad;

(2) where the agent does not disclose the name of his principal:

(3) where the principal, though disclosed, cannot be sued.

Rights of parties to a contract made by agent not disclosed.

231. If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can

show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

Performance of contract with agent supposed to be principal.

232. Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.

Illustration.

A, who owes 500 rupees to B, sells 1,000 rupees' worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set-off A's debt.

Right of person dealing with agent personally liable.

233. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

Illustration.

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable.

234. When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

Liability of pretended agent.

235. A person untruly [1] representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

Person falsely contracting as agent not entitled to performance.

236. A person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it if he was in reality acting, not as agent, but on his own account.

Liability of principal inducing belief that.

237. When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he has by his words or conduct

[1] *See* s. 208, *supra*.

agent's unauthorized acts were authorized.

induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

Illustrations.

(*a*) A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

(*b*) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.

Effect, on agreement, of misrepresentation or fraud by agent.

238. Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals [1]; but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals.

Illustrations.

(*a*) A being B's agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorized by B to make. The contract is voidable, as between B and C, at the option of C.

(*b*) A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor.

CHAPTER XI.

Of Partnership.

"Partnership" defined

239. "Partnership" is the relation which subsists between persons who have agreed to combine their property, labour or skill in some business, and to share the profits thereof between them.

"Firm" defined.

Persons who have entered into partnership with one another are called collectively a "firm".

Illustrations.

(*a*) A and B buy 100 bales of cotton, which they agree to sell for their joint account; A and B are partners in respect of such cotton.

(*b*) A and B buy 100 bales of cotton, agreeing to share it between them. A and B are not partners.

(*c*) A agrees with B, a goldsmith, to buy and furnish gold to B, to be worked up by him and sold, and that they shall share in the resulting profit or loss. A and B are partners.

(*d*) A and B agree to work together as carpenters, but that A shall receive all profits and shall pay wages to B. A and B are not partners.

(*e*) A and B are joint owners of a ship. This circumstance does not make them partners.

[1] *See* s. 250, *infra.*

Lender not a partner by advancing money for share of profits.

240. A loan to a person engaged or about to engage in any trade or undertaking, upon a contract with such person that the lender shall receive interest at a rate varying with the profits or that he shall receive a share of the profits, does not, of itself, constitute the lender a partner, or render him responsible as such.

Property left in business by retiring partner, or deceased partner's representative.

241. In the absence of any contract to the contrary, property left by a retiring partner, or the representative of a deceased partner, to be used in the business is to be considered a loan within the meaning of the last preceding section.

Servant or agent remunerated by share of profits not a partner.

242. No contract for the remuneration of a servant or agent of any person, engaged in any trade or undertaking, by a share of the profits of such trade or undertaking shall, of itself, render such servant or agent responsible as a partner therein, nor give him the rights of a partner.

Widow or child of deceased partner receiving annuity out of profits not a partner.

243. No person, being a widow or child of a deceased partner of a trader and receiving, by way of annuity, a proportion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of such trader, or be subject to any liabilities incurred by him.

Person receiving portion of profits for sale of good-will not a partner.

244. No person receiving, by way of annuity or otherwise, a portion of the profits of any business, in consideration of the sale by him of the good-will of such business, shall, by reason only of such receipt, be deemed to be a partner of the person carrying on such business, or be subject to his liabilities.[1]

Responsibility of person leading another to believe him a partner.

245. A person who has, by words spoken or written or by his conduct, led another to believe that he is a partner in a particular firm, is responsible to him as partner in such firm.

Liability of person permitting himself to be represented as a partner.

246. Any one consenting to allow himself to be represented as a partner is liable, as such, to third persons who, on the faith thereof, give credit to the partnership.

Minor partner not personally liable, but his share is.

247. A person who is under the age of majority according to the law to which he is subject[2] may be admitted to the benefits of partnership, but cannot be made personally liable for any obligation of the firm; but the share of such minor in the property of the firm is liable for the obligations of the firm.

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[1] *Cf.* the Partnership Act, 1865 (28 & 29 Vict., c. 86), s. 4.

[2] *See* the Indian Majority Act, 1875 (IX of 1875), *infra*.

Liability of minor partner on attaining majority.

248. A person who has been admitted to the benefits of partnership under the age of majority [1] becomes, on attaining that age, liable for all obligations incurred by the partnership since he was so admitted, unless he gives public notice, within a reasonable time, of his repudiation of the partnership.

Partner's liability for debts of partnership.

249. Every partner is liable for all debts and obligations incurred while he is a partner in the usual course of business by or on behalf of the partnership; but a person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of such firm for any thing done before he became a partner.

Partner's liability to third person for neglect or fraud of co-partner.

250. Every partner is liable to make compensation to third persons in respect of loss or damage arising from the neglect or fraud of any partner in the management of the business of the firm.

Partner's power to bind co-partners.

251. Each partner who does any act necessary for, or usually done in, carrying on the business of such a partnership as that of which he is a member binds his co-partners to the same extent as if he were their agent duly appointed for that purpose.

Exception.—If it has been agreed between the partners that any restriction shall be placed upon the power of any one of them, no act done in contravention of such agreement shall bind the firm with respect to persons having notice of such agreement.

Illustrations.

(*a*) A and B trade in partnership, A residing in England, and B in India. A draws a bill of exchange in the name of the firm. B has no notice of the bill, nor is he at all interested in the transaction. The firm is liable on the bill, provided the holder did not know of the circumstances under which the bill was drawn.

(*b*) A, being one of a firm of solicitors and attorneys, draws a bill of exchange in the name of the firm without authority. The other partners are not liable on the bill.

(*c*) A and B carry on business in partnership as bankers. A sum of money is received by A on behalf of the firm. A does not inform B of such receipt, and afterwards A appropriates the money to his own use. The partnership is liable to make good the money.

(*d*) A and B are partners. A, with the intention of cheating B, goes to a shop and purchases articles on behalf of the firm, such as might be used in the ordinary course of the partnership business, and converts them to his own separate use, there being no collusion between him and the seller. The firm is liable for the price of the goods.

Annulment of contract defining partners' rights and obligations.

252. Where partners have by contract regulated and defined, as between themselves, their rights and obligations, such contract can be annulled or altered only by consent of all [2] of them, which consent must either be expressed, or be implied from a uniform course of dealing.

Illustration.

A, B and C, intending to enter into partnership, execute written articles of agreement, by which it is stipulated that the nett profits arising from the partnership business shall be equally divided between them. Afterwards they carry on the partnership business for

[1] *See* the Indian Majority Act, 1875 (IX of 1875), *infra*.

[2] *See* s. 253, cl. (5), *infra*.

many years, A receiving one-half of the nett profits and the other half being divided equally between B and C. All parties know of and acquiesce in this arrangement. This course of dealing supersedes the provision in the articles as to the division of profits.

Rules determining partners' mutual relations, where no contract to contrary.

253. In the absence of any contract to the contrary the relations of partners to each other are determined by the following rules:—

(1) all partners are joint owners of all property originally brought into the partnership stock, or bought with money belonging to the partnership, or acquired for purposes of the partnership business. All such property is called partnership property. The share of each partner in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss:

(2) all partners are entitled to share equally in the profits of the partnership business, and must contribute equally towards the losses sustained by the partnership:

(3) each partner has a right to take part in the management of the partnership business:

(4) each partner is bound to attend diligently to the business of the partnership, and is not entitled to any remuneration for acting in such business:

(5) when differences arise as to ordinary matters connected with the partnership business, the decision shall be according to the opinion of the majority of the partners; but no change in the nature of the business of the partnership can be made, except with the consent of all the partners [1]:

(6) no person can introduce a new partner into a firm without the consent of all the partners:

(7) if from any cause whatsoever any member of a partnership ceases to be so, the partnership is dissolved as between all the other members:

(8) unless the partnership has been entered into for a fixed term, any partner may retire from it at any time:

(9) where a partnership has been entered into for a fixed term, no partner can, during such term, retire, except with the consent of all the partners, nor can he be expelled by his partners for any cause whatever, except by order of Court:

(10) partnerships, whether entered into for a fixed term or not, are dissolved by the death of any partner.

When Court may dissolve partnership.

254. At the suit of a partner the Court may dissolve the partnership in the following cases:—

(1) when a partner becomes of unsound mind:

[1] *See* s. 252, *supra.*

(2) when a partner, other than the partner suing, has been adjudicated an insolvent under any law relating to insolvent debtors:

(3) when a partner, other than the partner suing, has done any act by which the whole interest of such partner is legally transferred to a third person:

(4) when any partner becomes incapable of performing his part of the partnership contract:

(5) when a partner, other than the partner suing, is guilty of gross misconduct in the affairs of the partnership or towards his partners:

(6) when the business of the partnership can only be carried on at a loss.

Dissolution of partnership by prohibition of business.

255. A partnership is in all cases dissolved by its business being prohibited by law.

Rights and obligations of partners in partnership continued after expiry of term for which it was entered into.

256. If a partnership entered into for a fixed term be continued after such term has expired, the rights and obligations of the partners will, in the absence of any agreement to the contrary, remain the same as they were at the expiration of the term, so far as such rights and obligations can be applied to a partnership dissolvable at the will of any partner.

General duties of partners.

257. Partners are bound to carry on the business of the partnership for the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

Account to firm of benefit derived from transaction affecting partnership.

258. A partner must account to the firm for any benefit derived from a transaction affecting the partnership.

Illustrations.

(*a*) A, B and C are partners in trade. C, without the knowledge of A and B, obtains for his own sole benefit a lease of the house in which the partnership business is carried on. A and B are entitled to participate, if they please, in the benefit of the lease.

(*b*) A, B and C carry on business together in partnership as merchants trading between Bombay and London. D, a merchant in London, to whom they make their consignments, secretly allows C a share of the commission which he receives upon such consignments, in consideration of C's using his influence to obtain the consignments for him. C is liable to account to the firm for the money so received by him.

Obligations, to firm, of partner carrying on

259. If a partner, without the knowledge and consent of the other partners, carries on any business competing or interfering with that of the firm, he must account to the firm for all profits made in such

business, and must make compensation to the firm for any loss occasioned thereby. — competing business.

260. A continuing guarantee, given either to a firm or to a third person, in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or in respect of the transactions of which, such guarantee was given.[1] — Revocation of continuing guarantee by change in firm.

261. The estate of a partner who has died is not, in the absence of an express agreement, liable in respect of any obligation incurred by the firm after his death. — Non-liability of deceased partner's estate for subsequent obligations.

262. Where there are joint debts due from the partnership, and also separate debts due from any partner, the partnership property must be applied in the first instance in payment of the debts of the firm, and, if there is any surplus, then the share of each partner must be applied in payment of his separate debts or paid to him. The separate property of any partner must be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm. — Payment of partnership debts, and of separate debts.

263. After a dissolution of partnership, the rights and obligations of the partners continue in all things necessary for winding-up the business of the partnership. — Continuance of partners' rights and obligations after dissolution.

264. Persons dealing with a firm will not be affected by a dissolution of which no public notice has been given, unless they themselves had notice of such dissolution. — Notice of dissolution.

[2] **265.** Where a partner is entitled to claim a dissolution of partnership, or where a partnership has terminated, the Court may, in the absence of any contract to the contrary, wind up the business of the partnership, provide for the payment of its debts and distribute the surplus according to the shares of the partners respectively. — Winding-up by Court on dissolution or after termination.

266. Extraordinary partnerships, such as partnerships with limited liability, incorporated partnerships and joint-stock companies, shall be regulated by the law for the time being in force relating thereto.[3] — Limited liability partnerships, incorporated partnerships and joint-stock companies.

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[1] *Cf.* the Mercantile Law Amendment Act, 1856 (19 & 20 Vict., c. 97), s. 4.

[2] This section was substituted for the original s. 265 by the Indian Contract Act Amendment Act, 1886 (IV of 1886), s. 1, General Acts, Vol. III.

[3] *See* for instance the Indian Companies Act, 1882 (VI of 1882), General Acts, Vol. III, and the following special Acts (not republished in any Code) :—V of 1838 (Bengal Bonded Warehouse), as amended by V of 1854; V of 1857 (Oriental Gas Company), as amended by XI of 1867; the Presidency Banks Act, 1876 (XI of 1876), *infra;* Madras Act VI of 1869 (Equitable Assurance Society).

SCHEDULE.

ENACTMENTS REPEALED

Statutes.

No. and year of Statute.	Title.	Extent of repeal.
Stat. 29 Car. II, cap. 3.	An Act for prevention of Frauds and Perjuries .	Sections 1, 2, 3, 4 and 17.
Stat. 11 & 12 Vict., cap. 21.	To consolidate and amend the law relating to insolvent debtors in India.	Section 42.

Acts.

No. and year of Act.	Title.	Extent of repeal.
Act XIII of 1840	An Act for the amendment of the law regarding factors, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Statute 4 Geo. IV, Chap. 83, as altered and amended by the Statute 6 Geo. IV, chap. 94.	The whole.
Act XIV of 1840	An Act for rendering a written memorandum necessary to the validity of certain promises and engagements, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Statute 9 Geo. IV, Chap. 14.	The whole.
Act XX of 1844	An Act to amend the law relating to Advances *bonâ fide* made to Agents intrusted with Goods, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Statute 5 & 6 Victoria, c. 39, as altered by this Act.	The whole.
Act XXI of 1848	An Act for avoiding Wagers	The whole.
Act V of 1866	An Act to provide a summary procedure on bills of exchange, and to amend in certain respects the Commercial law of British India.	Sections 9 and 10.
Act XV of 1866	An Act to amend the law of Partnership in India .	The whole.
Act VIII of 1867	An Act to amend the law relating to Horse-racing in India.	The whole.

THE INDIAN CHRISTIAN MARRIAGE ACT, 1872.

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ACT No. XV OF 1872.[1]

[*18th July 1872.*]

An Act to consolidate and amend the law relating to the solemnization in India of the marriages of Christians.

WHEREAS it is expedient to consolidate and amend the law relating Preamble.

[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1871, Pt. V, p. 473; for Proceedings in Council, *see ibid*, 1870, Supplement, p. 1077; *ibid.*, 1871, Supplement, pp. 1426, 1643; *ibid*, 1872, Supplement, pp. 257, 723, 742, 805, 813 and 858. This Act is based on 14 & 15 Vict., c. 40, and 58 Geo. III, c. 84 (both Statutes relates to marriages in India and are now no longer in force), and Acts V of 1852 and V of 1865; the last two Acts were repealed by this Act.

to the solemnization in India of the marriages of persons professing the Christian religion; It is hereby enacted as follows:—

PRELIMINARY.

Short title.

1. This Act may be called the Indian Christian Marriage Act, 1872.

Extent.

It extends to the whole of British India,[1] and, so far only as regards Christian subjects of Her Majesty, to the territories of Native Princes and States in alliance with Her Majesty.

[*Commencement.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

Enactments repealed.

2. The enactments specified in the fifth schedule hereto annexed are repealed, but not so as to invalidate any marriage confirmed by, or solemnized under, any such enactment.

And all appointments made, licenses granted, consents given, certificates issued, and other things duly done under any such enactment shall be deemed to be respectively made, granted, given, issued and done under this Act.

For clause xxiv of section 19 of the Court-fees Act, 1870,[2] the following shall be substituted:— VII of 1870.

"xxiv, Petitions under the Indian Christian Marriage Act, 1872, sections 45 and 48."

Interpretation-clause.

3. In this Act, unless there is something repugnant in the subject or context,—

"Church of England" and "Anglican" mean and apply to the Church of England as by law established;

"Church of Scotland" means the Church of Scotland as by law established;

"Church of Rome" and "Roman Catholic" mean and apply to the Church which regards the Pope of Rome as its spiritual head;

"Church" includes any chapel or other building generally used for public Christian worship;

"minor" means a person who has not completed the age of twenty-one years and who is not a widower or a widow;

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[1] Act XV of 1872 has been declared in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (*1*), and Sch. I, Bur. Code; in the Hill District of Arakan by the Arakan Hill District Laws Regulation, 1874 (IX of 1874), s. 3, *ibid;* in British Baluchistan by the Baluchistan Laws Regulation, 1890 (I of 1890), s. 3, Bal. Code; and in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (III of 1872), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (III of 1899), Ben. Code; also by notification under s. 3 of the Scheduled Districts Act, 1874 (XIV of 1874), *infra*, in the following Scheduled Districts, namely :— the Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum [*see* Gazette of India, 1881, Pt. I, p. 504]; and the North-Western Provinces Tarai [*see ibid*, 1876, Pt. I, p. 505].

The District of Lohardaga, now called the Ranchi District (*see* Calcutta Gazette, 1899, Pt. I, p. 44), included at this time the Palamau District, which was separated in 1894.

[2] *Supra.*

"Native State" means the territories of any Native Prince or State in alliance with Her Majesty;

the expression "Christians" means persons professing the Christian religion;

and the expression "Native Christians" includes the Christian descendants of Natives of India converted to Christianity, as well as such converts:

[1]["Registrar General of Births, Deaths and Marriages" means a Registrar General of Births, Deaths and Marriages appointed under the Births, Deaths and Marriages Registration Act, 1886.]

VI of 1886.

PART I.

THE PERSONS BY WHOM MARRIAGES MAY BE SOLEMNIZED.

Marriages to be solemnized according to Act.

4. Every marriage between persons, one or both of whom is [2][or are] a Christian or Christians, shall be solemnized in accordance with the provisions of the next following section; and any such marriage solemnized otherwise than in accordance with such provisions shall be void.

Persons by whom marriages may be solemnized.

5. Marriages may be solemnized in India—

(1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which he is a Minister;

(2) by any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of Scotland;

(3) by any Minister of religion licensed under this Act to solemnize marriages;

(4) by, or in the presence of, a Marriage Registrar appointed under this Act;

(5) by any person licensed under this Act to grant certificates of marriage between Native Christians.

Grant and revocation of

[3] **6.** The Local Government,[4] so far as regards the territories under

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[1] This paragraph was added by the Births, Deaths and Marriages Registration Act, 1886 (VI of 1886), s. 30, cl. (*a*), General Acts, Vol. III.

[2] These words were inserted by the Repealing and Amending Act, 1891 (XII of 1891), Sch. II, General Acts, Vol. IV.

[3] This section was substituted for the original s. 6 by the Indian Christian Marriage Act (1872) Amendment Act, 1891 (II of 1891), s. 1 (*1*), General Acts, Vol. IV.

[4] For notifications in the North-Western Provinces and Oudh, under the powers conferred by ss. 6, 7, 9, 62, 82, 83 and 85, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 42.

licenses to solemnize marriages.

its administration, and the Governor General in Council, so far as regards any Native State, may, by notification in the local official Gazette or in the Gazette of India, as the case may be, grant licenses [1] to Ministers of Religion to solemnize marriages within such territories and State, respectively, and may, by a like notification, revoke such licenses.

Marriage Registrars.

7. The Local Government may appoint one or more Christians, either by name or as holding any office for the time being, to be the Marriage Registrar or Marriage Registrars [2] for any district subject to its administration.

Senior Marriage Registrar.

Where there are more Marriage Registrars than one in any district, the Local Government shall appoint one of them to be the Senior Marriage Registrar.

Magistrate when to be Marriage Registrar.

When there is only one Marriage Registrar in a district, and such Registrar is absent from such district, or ill, or when his office is temporarily vacant, the Magistrate of the district shall act as, and be, Marriage Registrar thereof during such absence, illness or temporary vacancy.

Marriage Registrars in Native States.

8. The Governor-General in Council may, by notification in the Gazette of India, appoint any Christian, either by name or as holding any office for the time being, to be a Marriage Registrar in respect of any district or place within the territories of any Native Prince or State in alliance with Her Majesty.

The Governor General in Council may, by like notification, revoke any such appointment.

Licensing of persons to grant certificates of marriage between Native Christians.

9. The Local Government [3] or (so far as regards any Native State) the Governor General in Council may grant a license to any Christian, either by name or as holding any office for the time being, authorizing him to grant certificates of marriage between Native Christians.

Any such license may be revoked by the authority by which it was granted, and every such grant or revocation shall be notified in the official Gazette.

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[1] As to validation of licenses granted under former Acts, *see* the Indian Christian Marriage Act (1872) Amendment Act, 1891 (II of 1891), s. 1 (*2*) and (*3*), General Acts, Vol. IV.

[2] For notifications under the powers conferred by this section in—

(1) Ajmer-Merwara	*see* Aj. R. & O.;
(2) Bombay	*see* Bom. R. & O.;
(3) British Baluchistan	*see* Gazette of India, 1892, Pt. II, p. 53;
(4) Burma	*see* Bur. R. M.;
(5) Central Provinces	*see* C. P. R. & O.;
(6) Punjab	*see* Punj. R. & O.;
(7) the United Provinces of Agra and Oudh.	*see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 42.

[3] For instances of such licenses granted in Burma, *see* Burma Gazette, 1899, Pt. I, p. 284.

PART II.

TIME AND PLACE AT WHICH MARRIAGES MAY BE SOLEMNIZED.

Time for solemnizing marriage.

10. Every marriage under this Act shall be solemnized between the hours of six in the morning and seven in the evening:

Exceptions.

Provided that nothing in this section shall apply to—

(1) a Clergyman of the Church of England solemnizing a marriage under a special license permitting him to do so at any hour other than between six in the morning and seven in the evening, under the hand and seal of the Anglican Bishop of the Diocese or his Commissary, or

(2) a Clergyman of the Church of Rome solemnizing a marriage between the hours of seven in the evening and six in the morning, when he has received a general or special license in that behalf from the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is so solemnized, or from such person as the same Bishop has authorized to grant such license, [1][or

(3) a Clergyman of the Church of Scotland solemnizing a marriage according to the rules, rites, ceremonies and customs of the Church of Scotland].

Place for solemnizing marriage.

11. No Clergyman of the Church of England shall solemnize a marriage in any place other than a church [2][where worship is generally held according to the forms of the Church of England],

unless there is no [3][such] church within five miles distance by the shortest road from such place, or

unless he has received a special license authorizing him to do so under the hand and seal of the Anglican Bishop of the Diocese or his Commissary.

Fee for special license.

For such special license, the Registrar of the Diocese may charge such additional fee as the said Bishop from time to time authorizes.

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[1] This portion was added by the Indian Christian Marriage Act (1872) Amendment Act, 1891 (II of 1891), s. 2, General Acts, Vol. IV.

[2] These words were added by the Indian Christian Marriage Act (1872) Amendment Act, 1891 (II of 1891), s. 3, *ibid.*

[3] The word "such" was inserted by the Indian Christian Marriage Act (1872) Amendment Act, 1891 (II of 1891), s. 3, *ibid.*

(*Part III.—Marriages solemnized by Ministers of Religion licensed under this Act.*)

PART III.

MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION LICENSED UNDER THIS ACT.

Notice of intended marriage.

12. Whenever a marriage is intended to be solemnized by a Minister of Religion licensed to solemnize marriages under this Act—

one of the persons intending marriage shall give notice in writing, according to the form contained in the first schedule hereto annexed, or to the like effect, to the Minister of Religion whom he or she desires to solemnize the marriage, and shall state therein—

(*a*) the name and surname, and the profession or condition, of each of the persons intending marriage,

(*b*) the dwelling-place of each of them,

(*c*) the time during which each has dwelt there, and

(*d*) the church or private dwelling in which the marriage is to be solemnized:

Provided that, if either of such persons has dwelt in the place mentioned in the notice during more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

Publication of such notice.

13. If the persons intending marriage desire it to be solemnized in a particular church, and if the Minister of Religion to whom such notice has been delivered be entitled to officiate therein, he shall cause the notice to be affixed in some conspicuous part of such church.

Return or transfer of notice.

But if he is not entitled to officiate as a Minister in such church, he shall, at his option, either return the notice to the person who delivered it to him, or deliver it to some other Minister entitled to officiate therein, who shall thereupon cause the notice to be affixed as aforesaid.

Notice of intended marriage in private dwelling.

14. If it be intended that the marriage shall be solemnized in a private dwelling, the Minister of Religion, on receiving the notice prescribed in section 12, shall forward it to the Marriage Registrar of the district, who shall affix the same to some conspicuous place in his own office.

Sending copy of notice to Marriage Registrar when one party is a minor.

15. When one of the persons intending marriage is a minor, every Minister receiving such notice shall, unless within twenty-four hours after its receipt he returns the same under the provisions of section 13, send by the post or otherwise a copy of such notice to the Marriage Registrar of the district, or, if there be more than one Registrar of such district, to the Senior Marriage Registrar.

Procedure on receipt of notice.

16. The Marriage Registrar or Senior Marriage Registrar, as the case may be, on receiving any such notice, shall affix it to some conspi-

cuous place in his own office, and the latter shall further cause a copy of the said notice to be sent to each of the other Marriage Registrars in the same district, who shall likewise publish the same in the manner above directed.

Issue of certificate of notice given and declaration made.

17. Any Minister of Religion consenting or intending to solemnize any such marriage as aforesaid, shall, on being required so to do by or on behalf of the person by whom the notice was given, and upon one of the persons intending marriage making the declaration hereinafter required, issue under his hand a certificate of such notice having been given and of such declaration having been made:

Proviso.

Provided—

(1) that no such certificate shall be issued until the expiration of four days after the date of the receipt of the notice by such Minister;

(2) that no lawful impediment be shown to his satisfaction why such certificate should not issue; and

(3) that the issue of such certificate has not been forbidden, in manner hereinafter mentioned, by any person authorized in that behalf.

Declaration before issue of certificate.

18. The certificate mentioned in section 17 shall not be issued until one of the persons intending marriage has appeared personally before the Minister and made a solemn declaration—

(*a*) that he or she believes that there is not any impediment of kindred or affinity or other lawful hindrance to the said marriage,

and, when either or both of the parties is or are a minor or minors,

(*b*) that the consent or consents required by law has or have been obtained thereto, or that there is no person resident in India having authority to give such consent, as the case may be.

Consent of father, or guardian, or mother.

19. The father, if living, of any minor, or, if the father be dead, the guardian of the person of such minor, and, in case there be no such guardian, then the mother of such minor, may give consent to the minor's marriage,

and such consent is hereby required for the same marriage, unless no person authorized to give such consent be resident in India.

Power to prohibit by notice issue of certificate.

20. Every person whose consent to a marriage is required under section 19 is hereby authorized to prohibit the issue of the certificate by any Minister, at any time before the issue of the same, by notice in writing to such Minister, subscribed by the person so authorized with his or her name and place of abode and position with respect to either

of the persons intending marriage, by reason of which he or she is so authorized as aforesaid.

Procedure on receipt of notice.

21. If any such notice be received by such Minister, he shall not issue his certificate and shall not solemnize the said marriage until he has examined into the matter of the said prohibition, and is satisfied that the person prohibiting the marriage has no lawful authority for such prohibition,

or until the said notice is withdrawn by the person who gave it.

Issue of certificate in case of minority.

22. When either of the persons intending marriage is a minor, and the Minister is not satisfied that the consent of the person whose consent to such marriage is required by section 19 has been obtained, such Minister shall not issue such certificate until the expiration of fourteen days after the receipt by him of the notice of marriage.

Issue of certificates to Native Christians.

23. When any Native Christian about to be married takes a notice of marriage to a Minister of Religion, or applies for a certificate from such Minister under section 17, such Minister shall, before issuing the certificate, ascertain whether such Native Christian is cognizant of the purport and effect of the said notice or certificate, as the case may be, and, if not, shall translate or cause to be translated the notice or certificate to such Native Christian into some language which he understands.

Form of certificate.

24. The certificate to be issued by such Minister shall be in the form contained in the second schedule hereto annexed, or to the like effect.

Solemnization of marriage.

25. After the issue of the certificate by the Minister, marriage may be solemnized between the persons therein described according to such form or ceremony as the Minister thinks fit to adopt:

Provided that the marriage be solemnized in the presence of at least two witnesses besides the Minister.

Certificate void if marriage not solemnized within two months.

26. Whenever a marriage is not solemnized within two months after the date of the certificate issued by such Minister as aforesaid, such certificate and all proceedings (if any) thereon shall be void,

and no person shall proceed to solemnize the said marriage until new notice has been given and a certificate thereof issued in manner aforesaid.

PART IV.

Registration of Marriages solemnized by Ministers of Religion.

Marriages when to be registered.

27. All marriages hereafter solemnized in India between persons one or both of whom professes or profess the Christian religion, except

marriages solemnized under Part V or Part VI of this Act, shall be registered [1] in manner hereinafter prescribed.

Registration of marriages solemnized by clergymen of Church of England.

28. Every Clergyman of the Church of England shall keep a register of marriages and shall register therein, according to the tabular form set forth in the third schedule hereto annexed, every marriage which he solemnizes under this Act.

Quarterly returns to Archdeaconry.

29. Every Clergyman of the Church of England shall send four times in every year returns in duplicate, authenticated by his signature, of the entries in the register of marriages solemnized at any place where he has any spiritual charge, to the Registrar of the Archdeaconry to which he is subject, or within the limits of which such place is situate.

Contents of returns.

Such quarterly returns shall contain all the entries of marriages contained in the said register from the first day of January to the thirty-first day of March, from the first day of April to the thirtieth day of June, from the first day of July to the thirtieth day of September, and from the first day of October to the thirty-first day of December, of each year respectively, and shall be sent by such Clergyman within two weeks from the expiration of each of the quarters above specified.

The said Registrar upon receiving the said returns shall send one copy thereof to the [2][Registrar General of Births, Deaths and Marriages].

Registration and returns of marriages solemnized by Clergymen of Church of Rome.

30. Every marriage solemnized by a Clergyman of the Church of Rome shall be registered by the person and according to the form directed in that behalf by the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is solemnized,

and such person shall forward quarterly to the [2][Registrar General of Births, Deaths and Marriages] returns of the entries of all marriages registered by him during the three months next preceding.

Registration and returns of marriages solemnized by Clergymen of Church of Scotland.

31. Every Clergyman of the Church of Scotland shall keep a register of marriages,

and shall register therein, according to the tabular form set forth in the third schedule hereto annexed, every marriage which he solemnizes under this Act,

and shall forward quarterly to the [2][Registrar General of Births, Deaths and Marriages], through the Senior Chaplain of the Church of Scotland, returns, similar to those prescribed in section 29, of all such marriages.

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[1] As to the establishment of general registry offices of births, deaths and marriages, *see* the Births, Deaths and Marriages Registration Act, 1886 (VI of 1886), Ch. II, General Acts, Vol. III.

[2] These words were substituted for the words "Secretary to the Local Government," by the Births, Deaths and Marriages Registration Act, 1886 (VI of 1886), s. 30, cl. (*b*), General Acts, Vol. III.

(Part IV.—Registration of Marriages solemnized by Ministers of Religion.)

Certain marriages to be registered in duplicate.

32. Every marriage solemnized by any person who has received episcopal ordination, but who is not a Clergyman of the Church of England, or of the Church of Rome, or by any Minister of Religion licensed under this Act to solemnize marriages, shall, immediately after the solemnization thereof, be registered in duplicate by the person solemnizing the same; (that is to say) in a marriage-register-book to be kept by him for that purpose, according to the form contained in the fourth schedule hereto annexed, and also in a certificate attached to the marriage-register-book as a counterfoil.

Entries of such marriages to be signed and attested.

33. The entry of such marriage in both the certificate and marriage-register-book shall be signed by the person solemnizing the marriage, and also by the persons married, and shall be attested by two credible witnesses, other than the person solemnizing the marriage, present at its solemnization.

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register-book.

Certificate to be forwarded to Marriage Registrar, copied and sent to Registrar General.

34. The person solemnizing the marriage shall forthwith separate the certificate from the marriage-register-book and send it, within one month from the time of the solemnization, to the Marriage Registrar of the district in which the marriage was solemnized, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar,

who shall cause such certificate to be copied into a book to be kept by him for that purpose,

and shall send all the certificates which he has received during the month, with such number and signature or initials added thereto as are hereinafter required, to the [1][Registrar General of Births, Deaths and Marriages].

Copies of certificates to be entered and numbered.

35. Such copies shall be entered in order from the beginning to the end of the said book, and shall bear both the number of the certificate as copied, and also a number to be entered by the Marriage Registrar, indicating the number of the entry of the said copy in the said book, according to the order in which he receives each certificate.

Registrar to add number of entry to certificate, and send to Registrar General.

36. The Marriage Registrar shall also add such last-mentioned number of the entry of the copy in the book to the certificate, with his signature or initials, and shall, at the end of every month, send the same to the [1][Registrar General of Births, Deaths and Marriages].

Registration of marriages between Native Chris-

37. When any marriage between Native Christians is solemnized under Part I or Part III of this Act, the person solemnizing the same shall, instead of proceeding in the manner provided by sections

[1] *See* footnote under s. 30, *supra*.

28 to 36, both inclusive, register the marriage in a separate register-book, and shall keep it safely until it is filled, or, if he leave the district in which he solemnized the marriage before the said book is filled, shall make over the same to the person succeeding to his duties in the said district.

tians under Part I or III. Custody and disposal of register-book.

Whoever has the control of the book at the time when it is filled shall send it to the Marriage Registrar of the district, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar, who shall send it to the [1][Registrar General of Births, Deaths and Marriages,] to be kept by him with the records of his office.

PART V.

MARRIAGES SOLEMNIZED BY, OR IN THE PRESENCE OF, A MARRIAGE REGISTRAR.

38. When a marriage is intended to be solemnized by, or in the presence of, a Marriage Registrar, one of the parties to such marriage shall give notice in writing, in the form contained in the first schedule hereto annexed, or to the like effect, to any Marriage Registrar of the District within which the parties have dwelt;

Notice of intended marriage before Marriage Registrar.

or, if the parties dwell in different districts, shall give the like notice to a Marriage Registrar of each district,

and shall state therein the name and surname, and the profession or condition, of each of the parties intending marriage, the dwelling-place of each of them, the time during which each has dwelt therein, and the place at which the marriage is to be solemnized:

Provided that, if either party has dwelt in the place stated in the notice for more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

39. Every Marriage Registrar shall, on receiving any such notice, cause a copy thereof to be affixed in some conspicuous place in his office.

Publication of notice.

When one of the parties intending marriage is a minor, every Marriage Registrar shall, within twenty-four hours after the receipt by him of the notice of such marriage, send, by post or otherwise, a copy of such notice to each of the other Marriage Registrars (if any) in the same district, who shall likewise affix the copy in some conspicuous place in his own office.

40. The Marriage Registrar shall file all such notices and keep them with the records of his office,

Notice to be filed and copy entered in

[1] *See* footnote under s. 30, *supra*.

Marriage Notice Book.

and shall also forthwith enter a true copy of all such notices in a book to be furnished to him for that purpose by the Local Government, and to be called the "Marriage Notice Book";

and the Marriage Notice Book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

Certificate of notice given and oath made.

41. If the party by whom the notice was given requests the Marriage Registrar to issue the certificate next hereinafter mentioned, and if one of the parties intending marriage has made oath as hereinafter required, the Marriage Registrar shall issue under his hand a certificate of such notice having been given and of such oath having been made:

Proviso.

Provided—

that no lawful impediment be shown to his satisfaction why such certificate should not issue;

that the issue of such certificate has not been forbidden, in manner hereinafter mentioned, by any person authorized in that behalf by this Act;

that four days after the receipt of the notice have expired; and further,

that where, by such oath, it appears that one of the parties intending marriage is a minor, fourteen days after the entry of such notice have expired.

Oath before issue of certificate.

42. The certificate mentioned in section 41 shall not be issued by any Marriage Registrar, until one of the parties intending marriage appears personally before such Marriage Registrar, and makes oath [1]—

(*a*) that he or she believes that there is not any impediment of kindred or affinity, or other lawful hindrance, to the said marriage, and

(*b*) that both the parties have, or (where they have dwelt in the districts of different Marriage Registrars) that the party making such oath has, had their, his or her usual place of abode within the district of such Marriage Registrar,

and, where either or each of the parties is a minor,—

(*c*) that the consent or consents to such marriage required by law has or have been obtained thereto, or that there is no person resident in India authorized to give such consent, as the case may be.

Petition to High Court to order certificate in less

43. When one of the parties intending marriage is a minor, and both such parties are at the time resident in any of the towns of Calcutta, Madras and Bombay, and are desirous of being married in less than

[1] As to meaning of "oath" *see* the General Clauses Act, 1897 (X of 1897), s. 3, cl. (*36*) and s. 4, General Acts, Vol. IV.

fourteen days after the entry of such notice as aforesaid, they may apply by petition to a Judge of the High Court, for an order upon the Marriage Registrar to whom the notice of marriage has been given, directing him to issue his certificate before the expiration of the said fourteen days required by section 41. than fourteen days.

And, on sufficient cause being shown, the said Judge may, in his discretion, make an order upon such Marriage Registrar, directing him to issue his certificate at any time to be mentioned in the said order before the expiration of the fourteen days so required. Order on petition.

And the said Marriage Registrar, on receipt of the said order, shall issue his certificate in accordance therewith.

44. The provisions of section 19 apply to every marriage under this Part, either of the parties to which is a minor; Consent of father or guardian.

and any person whose consent to such marriage would be required thereunder may enter a protest against the issue of the Marriage Registrar's certificate, by writing, at any time before the issue of such certificate, the word "forbidden" opposite to the entry of the notice of such intended marriage in the Marriage Notice Book, and by subscribing thereto his or her name and place of abode, and his or her position with respect to either of the parties, by reason of which he or she is so authorized. Protest against issue of certificate.

When such protest has been entered, no certificate shall issue until the Marriage Registrar has examined into the matter of the protest, and is satisfied that it ought not to obstruct the issue of the certificate for the said marriage, or until the protest be withdrawn by the person who entered it. Effect of protest.

45. If any person whose consent is necessary to any marriage under this Part is of unsound mind, Petition where person whose consent is necessary is insane, or unjustly withholds consent.

or if any such person (other than the father) without just cause withholds his consent to the marriage,

the parties intending marriage may apply by petition, where the person whose consent is necessary is resident within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or if he is not resident within any of the said towns, then to the District Judge:

And the said Judge of the High Court, or District Judge, as the case may be, may examine the allegations of the petition in a summary way: Procedure on petition.

and, if upon examination such marriage appears proper, such Judge of the High Court or District Judge, as the case may be, shall declare the marriage to be a proper marriage.

Such declaration shall be as effectual as if the person whose consent was needed had consented to the marriage;

and, if he has forbidden the issue of the Marriage Registrar's certificate, such certificate shall be issued and the like proceedings may be had under this Part in relation to the marriage as if the issue of such certificate had not been forbidden.

Petition when Marriage Registrar refuses certificate.

46. Whenever a Marriage Registrar refuses to issue a certificate under this Part, either of the parties intending marriage may apply by petition, where the district of such Registrar is within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or if such district is not within any of the said towns, then to the District Judge.

Procedure on petition.

The said Judge of the High Court, or District Judge, as the case may be, may examine the allegations of the petition in a summary way, and shall decide thereon.

The decision of such Judge of the High Court or District Judge, as the case may be, shall be final, and the Marriage Registrar to whom the application for the issue of a certificate was originally made shall proceed in accordance therewith.

Petition when Marriage Registrar in Native State refuses certificate.

47. Whenever a Marriage Registrar resident in any Native State refuses to issue his cetrificate, either of the parties intending marriage may apply by petition to the Governor General in Council, who shall decide thereon.

Such decision shall be final, and the Marriage Registrar to whom the application was originally made shall proceed in accordance therewith.

Petition when Registrar doubts authority of person forbidding.

48. Whenever a Marriage Registrar, acting under the provisions of section 44, is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do, the said Marriage Registrar shall apply by petition, where his district is within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or, if such district be not within any of the said towns, then to the District Judge.

Procedure on petition.

The said petition shall state all the circumstances of the case, and pray for the order and direction of the Court concerning the same,

and the said Judge of the High Court or District Judge, as the case may be, shall examine into the allegations of the petition and the circumstances of the case;

and if, upon such examination, it appears that the person forbidding the issue of such certificate is not authorized by law so to do, such Judge of the High Court or District Judge, as the case may be, shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid,

and thereupon such certificate shall be issued, and the like proceedings may be had in relation to such marriage as if the issue had not been forbidden.

Reference when Marriage Registrar in Native State doubts authority of person forbidding. Procedure on reference.

Whenever a Marriage Registrar appointed under section 8 to act within any Native State is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do, the said Marriage Registrar shall send a statement of all the circumstances of the case, together with all documents relating thereto, to the Governor General in Council.

If it appears to the Governor General in Council that the person forbidding the issue of such certificate is not authorized by law so to do, the Governor General in Council shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid,

and thereupon such certificate shall be issued, and the like proceedings may be had in relation to such marriage, as if the issue of the certificate had not been forbidden.

Liability for frivolous protest against issue of certificate.

49. Every person entering a protest with the Marriage Registrar, under this Part, against the issue of any certificate, on grounds which such Marriage Registrar, under section 44, or a Judge of the High Court or the District Judge, under section 45 or 46, declares to be frivolous and such as ought not to obstruct the issue of the certificate, shall be liable for the costs of all proceedings in relation thereto and for damages, to be recovered by suit by the person against whose marriage such protest was entered.

Form of certificate.

50. The certificate to be issued by the Marriage Registrar under the provisions of section 41 shall be in the form contained in the second schedule to this Act annexed or to the like effect,

and the Local Government shall furnish to every Marriage Registrar a sufficient number of forms of certificate.

Solemnization of marriage after issue of certificate.

51. After the issue of the certificate of the Marriage Registrar,

or, where notice is required to be given under this Act to the Marriage Registrars for different districts, after the issue of the certificates of the Marriage Registrars for such districts,

marriage may, if there be no lawful impediment to the marriage of the parties described in such certificate or certificates, be solemnized between them, according to such form and ceremony as they think fit to adopt.

But every such marriage shall be solemnized in the presence of some Marriage Registrar (to whom shall be delivered such certificate or certificates as aforesaid), and of two or more credible witnesses besides the Marriage Registrar.

And in some part of the ceremony each of the parties shall declare as follows, or to the like effect:—

"I do solemnly declare that I know not of any lawful impediment why I, *A. B.*, may not be joined in matrimony to *C. D.*"

And each of the parties shall say to the other as follows or to the like effect:—"I call upon these persons here present to witness that I, *A. B.*, do take thee, *C. D.*, to be my lawful wedded wife [*or husband*]."

When marriage not had within two months, after notice, new notice required.

52. Whenever a marriage is not solemnized within two months after the copy of the notice has been entered by the Marriage Registrar, as required by section 40, the notice and the certificate, if any, issued thereupon, and all other proceedings thereupon, shall be void;

and no person shall proceed to solemnize the marriage, nor shall any Marriage Registrar enter the same, until new notice has been given, and entry made, and certificate thereof given, at the time and in the manner aforesaid.

Marriage Registrar may ask for particulars to be registered.

53. A Marriage Registrar before whom any marriage is solemnized under this Part may ask of the persons to be married the several particulars required to be registered touching such marriage.

Registration of marriage solemnized under Part V.

54. After the solemnization of any marriage under this Part, the Marriage Registrar present at such solemnization shall forthwith register the marriage in duplicate; that is to say, in a marriage-register-book, according to the form of the fourth schedule hereto annexed, and also in a certificate attached to the marriage-register-book as a counterfoil.

The entry of such marriage in both the certificate and the marriage-register-book shall be signed by the person by or before whom the marriage has been solemnized, if there be any such person, and by the Marriage Registrar present at such marriage, whether or not it is solemnized by him, and also by the parties married, and attested by two credible witnesses other than the Marriage Registrar and person solemnizing the marriage.

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register-book.

Certificates to be sent monthly to Registrar General. Custody of register-book.

55. The Marriage Registrar shall forthwith separate the certificate from the marriage-register-book and send it, at the end of every month, to the [1][Registrar General of Births, Deaths and Marriages].

The Marriage Registrar shall keep safely the said register-book until it is filled, and shall then send it to the [1][Registrar General of Births, Deaths and Marriages], to be kept by him with the records of his office.

[1] These words were substituted for the words "Secretary to the Local Government," by the Births, Deaths and Marriages Registration Act, 1886 (VI of 1886), s. 30, cl. (*b*), General Acts, Vol. III.

(*Part V.—Marriages solemnized by, or in the presence of, a Marriage Registrar. Part VI.—Marriage of Native Christians.*)

Officers to whom Registrars in Native States shall send certificates.

56. The Marriage Registrars in Native States shall send the certificates mentioned in section 54 to such officers as the Governor General in Council from time to time, by notification in the Gazette of India, appoints in this behalf.[1]

Registrars to ascertain that notice and certificate are understood by Native Christians.

57. When any Native Christian about to be married gives a notice of marriage, or applies for a certificate from a Marriage Registrar, such Marriage Registrar shall ascertain whether the said Native Christian understands the English language, and, if he does not, the Marriage Registrar shall translate, or cause to be translated, such notice or certificate, or both of them, as the case may be, to such Native Christian into a language which he understands;

or the Marriage Registrar shall otherwise ascertain whether the Native Christian is cognizant of the purport and effect of the said notice and certificate.

Native Christians to be made to understand declarations.

58. When any Native Christian is married under the provisions of this Part, the person solemnizing the marriage shall ascertain whether such Native Christian understands the English language, and, if he does not, the person solemnizing the marriage shall, at the time of the solemnization, translate, or cause to be translated, to such Native Christian, into a language which he understands, the declarations made at such marriage in accordance with the provisions of this Act.

Registration of marriages between Native Christians.

59. The registration of marriages between Native Christians under this Part shall be made in conformity with the rules laid down in section 37 (so far as they are applicable), and not otherwise.

PART VI.[2]

Marriage of Native Christians.

On what conditions marriages of

60. Every marriage between Native Christians applying for a certificate shall, without the preliminary notice required under Part III,

[1] *Cf.* s. 24 (*2*) of the Births, Deaths and Marriages Registration Act, 1886 (VI of 1886), General Acts, Vol. III.

The Commissioner of Ajmer-Merwara has been appointed under this section for the Rajputana States, *see* Aj. R. & O.; the Agent, Governor General, Central India Agency, for States in Central India, *see* Brit. Enact. N. S. (C. I.), Ed. 1899, p. 45; the Registrar General of Births, Deaths and Marriages, Madras, for the Mysore State, *see ibid* (Mad. and My.), p. 47; the First Assistant to the Resident for the Hyderabad State, *see ibid* (Hyd.), p. 26.

[2] As to validation of past marriages solemnized under Part VI between persons of whom one only was a Native Christian, and penalty for solemnizing such marriages under Part VI in future, *see* the Marriages Validation Act, 1892 (II of 1892), General Acts, Vol. IV.

Native Christians may be certified.

be certified under this Part, if the following conditions be fulfilled, and not otherwise:—

(1) the age of the man intending to be married shall exceed sixteen years, and the age of the woman intending to be married shall exceed thirteen years:

(2) neither of the persons intending to be married shall have a wife or husband still living;

(3) in the presence of a person licensed under section 9, and of at least two credible witnesses other than such person, each of the parties shall say to the other—

"I call upon these persons here present to witness that I, *A. B.*, in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee, *C. D.*, to be my lawful wedded wife [*or husband*]" or words to the like effect:

Provided that no marriage shall be certified under this Part when either of the parties intending to be married has not completed his or her eighteenth year, unless such consent as is mentioned in section 19 has been given to the intended marriage, or unless it appears that there is no person living authorized to give such consent.

Grant of certificate.

61. When, in respect to any marriage solemnized under this Part, the conditions prescribed in section 60 have been fulfilled, the person licensed as aforesaid, in whose presence the said declaration has been made, shall, on the application of either of the parties to such marriage, and on the payment of a fee of four annas, grant a certificate of the marriage.

The certificate shall be signed by such licensed person, and shall be received in any suit touching the validity of such marriage as conclusive proof of its having been performed.

Keeping of register-book and deposit of extracts therefrom with Registrar General.

[1]**62.** (*1*) Every person licensed under section 9 shall keep in English, or in the vernacular language in ordinary use in the district or State in which the marriage was solemnized, and in such form as the Local Government by which he was licensed may from time to time prescribe,[2] a register-book of all marriages solemnized under this Part

[1] This section was substituted for the original s. 62 (relating to the keeping and form of the register-book) by the Indian Christian Marriage Act (1872) Amendment Act, 1891 (II of 1891), s. 4, General Acts, Vol. IV.

[2] For notifications issued under the powers conferred by this section in—
(1) Assam, *see* Assam Gazette, 1901, Pt. II, p. 397;
(2) Bengal, *see* Ben. R. & O.;
(3) Burma, *see* Bur. R. M.;
(4) the Central Provinces, *see* C. P. R. & O.;
(5) Punjab, *see* Punj. R. & O.;
(6) the United Provinces of Agra and Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 42.

For notifications in the United Provinces of Agra and Oudh, under the powers conferred by ss. 62, 6, 7, 9, 82, 83 and 85, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 42.

in his presence, and shall deposit in the office of the Registrar General of Births, Deaths and Marriages for the territories under the administration of the said Local Government, in such form and at such intervals as that Government may prescribe, true and duly authenticated extracts from his register-book of all entries made therein since the last of those intervals.

(*2*) Where the person keeping the register-book was licensed as regards a Native State by the Governor General in Council, references in sub-section (*1*) to the Local Government therein mentioned shall be read as references to the Local Government to whose Registrar General of Births, Deaths and Marriages certified copies of entries in registers of births and deaths are for the time being required to be sent under section 24, sub-section (*2*), of the Births, Deaths and Marriages Registration Act, 1886.[1]

VI of 1886.

Searches in register-book and copies of entries.

63. Every person licensed under this Act to grant certificates of marriage, and keeping a marriage-register-book under section 62, shall, at all reasonable times, allow search to be made in such book, and shall, on payment of the proper fee, give a copy, certified under his hand, of an entry therein.

Books in which marriages of Native Christians under Part I or Part III are registered.

64. The provisions of sections 62 and 63, as to the form of the register-book, depositing extracts therefrom, allowing searches thereof, and giving copies of the entries therein, shall, *mutatis mutandis*, apply to the books kept under section 37.

Part VI not to apply to Roman Catholics. Saving of certain marriages.

65. This Part of this Act, except so much of sections 62 and 63 as are referred to in section 64, shall not apply to marriages between Roman Catholics. But nothing herein contained shall invalidate any marriage celebrated between Roman Catholics under the provisions of Part V of Act No. XXV of 1864,[2] previous to the twenty-third day of February, 1865.

PART VII.

PENALTIES.

False oath, declaration, notice or certificate for procuring marriage.

[3] **66.** Whoever, for the purpose of procuring a marriage or license of marriage, intentionally,—

(*a*) where an oath or declaration is required by this Act, or by any rule or custom of a Church according to the rites

[1] General Acts, Vol. III.
[2] Act XXV of 1864 was repealed by Act V of 1865, which was repealed by this Act.
[3] This section was substituted for the original s. 66 by the Indian Christian Marriage Act (1872) Amendment Act, 1891 (II of 1891), s. 5, General Acts, Vol. IV.

and ceremonies of which a marriage is intended to be solemnized, such Church being the Church of England or of Scotland or of Rome, makes a false oath or declaration, or,

(*b*) where a notice or certificate is required by this Act, signs a false notice or certificate, *

shall be deemed to have committed the offence punishable under section 193 of the Indian Penal Code [1] with imprisonment of either description for a term which may extend to three years and, at the discretion of the Court, with fine. XLV of 1860.

Forbidding, by false personation, issue of certificate by Marriage Registrar.

67. Whoever forbids the issue, by a Marriage Registrar, of a certificate, by falsely representing himself to be a person whose consent to the marriage is required by law, knowing or believing such representation to be false, or not having reason to believe it to be true, shall be deemed guilty of the offence described in section 205 of the Indian Penal Code.[1] XLV of 1860.

Solemnizing marriage without due authority.

[2] **68.** Whoever, not being authorized by section 5 of this Act to solemnize marriages, solemnizes or professes to solemnize in the absence of a Marriage Registrar of the district in which the ceremony takes place, a marriage between persons one or both of whom is or are a Christian or Christians, shall be punished with imprisonment which may extend to ten years, or (in lieu of a sentence of imprisonment for seven years or upwards) with transportation for a term of not less than seven years, and not exceeding ten years,

or, if the offender is an European or American, with penal servitude according to the provisions of Act XXIV of 1855 [1] (*to substitute penal servitude for the punishment of transportation in respect of European and American convicts* * * *)[3],

and shall also be liable to fine.

Solemnizing marriage out of proper time, or without witnesses.

69. Whoever knowingly and wilfully solemnizes a marriage between persons one or both of whom is or are a Christian or Christians, at any time other than between the hours of six in the morning and seven in the evening, or in the absence of at least two credible witnesses other than the person solemnizing the marriage, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

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[1] General Acts, Vol. I.

[2] This section was substituted for the original s. 68 by Act II of 1891, s. 6, General Acts, Vol. IV.

[3] The words "and to amend the law relating to the removal of such convicts" were repealed by the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol. IV.

This section does not apply to marriages solemnized under special licenses granted by the Anglican Bishop of the Diocese or by his Commissary, nor to marriages performed between the hours of seven in the evening and six in the morning by a Clergyman of the Church of Rome, when he has received the general or special license in that behalf mentioned in section 10. Saving of marriages solemnized under special license.

[1][Nor does this section apply to marriages solemnized by a Clergyman of the Church of Scotland according to the rules, rites, ceremonies and customs of the Church of Scotland.]

70. Any Minister of Religion licensed to solemnize marriages under this Act, who, without a notice in writing, or, when one of the parties to the marriage is a minor, and the required consent of the parents or guardians to such marriage has not been obtained, within fourteen days after the receipt by him of notice of such marriage, knowingly and wilfully solemnizes a marriage under Part III, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine. Solemnizing without notice or within fourteen days after notice, marriage with minor.

71. A Marriage Registrar under this Act, who commits any of the following offences:—

(1) knowingly and wilfully issues any certificate for marriage, or solemnizes any marriage, without publishing the notice of such marriage as directed by this Act; Issuing certificate, or marrying without publication of notice;

[2](2) after the expiration of two months after the copy of the notice has been entered as required by section 40 in respect of any marriage, solemnizes such marriage; marrying after expiry of notice;

(3) solemnizes, without any order of a competent Court authorizing him to do so, any marriage, when one of the parties is a minor, before the expiration of fourteen days after the receipt of the notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Senior Marriage Registrar of the district if there be more Marriage Registrars of the district than one, and if he himself be not the Senior Marriage Registrar; solemnizing marriage with minor within fourteen days without authority of Court, or without sending copy of notice;

(4) issues any certificate the issue of which has been prohibited, as in this Act provided, by any person authorized to prohibit the issue thereof, issuing certificate against authorized prohibition.

shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

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[1] This paragraph was added by s. 7 of the Indian Christian Marriage Act (1872) Amendment Act, 1891 (II of 1891), General Acts, Vol. IV.

[2] This clause was substituted for the original cl. (*2*) by Act II of 1891, s. 8 (*1*), *ibid.*

Issuing certificate after expiry of notice, or, in case of minor, within fourteen days after notice, or against authorized prohibition.

72. Any Marriage Registrar knowingly and wilfully issuing any certificate for marriage after the expiration of [1][two months] after the notice has been entered by him as aforesaid,

or knowingly and wilfully issuing, without the order of a competent Court authorizing him so to do, any certificate for marriage, where one of the parties intending marriage is a minor, before the expiration of fourteen days after the entry of such notice, or any certificate the issue of which has been forbidden as aforesaid by any person authorized in this behalf,

shall be deemed to have committed an offence under section 166 of the Indian Penal Code.[2] XLV of 1860.

Persons authorized to solemnize marriage (other than Clergy of Churches of England, Scotland or Rome)

73. Whoever, being authorized under this Act to solemnize a marriage,

and not being a Clergyman of the Church of England, solemnizing a marriage after due publication of banns, or under a license from the Anglican Bishop of the Diocese or a Surrogate duly authorized in that behalf,

or, not being a Clergyman of the Church of Scotland, solemnizing a marriage according to the rules, rites, ceremonies and customs of that church,

or, not being a Clergyman of the Church of Rome, solemnizing a marriage according to the rites, rules, ceremonies and customs of that church,

issuing certificate or marrying, without publishing notice, or after expiry of certificate;

knowingly and wilfully issues any certificate for marriage under this Act, or solemnizes any marriage between such persons as aforesaid, without publishing, or causing to be affixed, the notice of such marriage as directed in Part III of this Act, or after the expiration of two months after the certificate has been issued by him:

issuing certificate for, or solemnizing, marriage with minor, within fourteen days after notice;

or knowingly and wilfully issues any certificate for marriage, or solemnizes a marriage between such persons when one of the persons intending marriage is a minor, before the expiration of fourteen days after the receipt of notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Marriage Registrar, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar of the district:

issuing certificate authorizedly forbidden;

or knowingly and wilfully issues any certificate the issue of which has been forbidden, under this Act, by any person authorized to forbid the issue:

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[1] These words were substituted for the words "three months" by s. 8 (*2*) of the Indian Christian Marriage Act (1872) Amendment Act, 1891 (II of 1891), General Acts, Vol. IV.

[2] General Acts, Vol. I.

or knowingly and wilfully solemnizes any marriage forbidden by any person authorized to forbid the same, solemnizing marriage authorizedly forbidden.

shall be punished with imprisonment for a term which may extend to four years, and shall also be liable to fine.

74. Whoever, not being licensed to grant a certificate of marriage under Part VI of this Act, grants such certificate intending thereby to make it appear that he is so licensed, shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine. Unlicensed person granting certificate pretending to be licensed.

[1][Whoever, being licensed to grant certificates of marriage under Part VI of this Act, without just cause refuses, or wilfully neglects or omits, to perform any of the duties imposed upon him by that Part shall be punished with fine which may extend to one hundred rupees.]

75. Whoever, by himself or another, wilfully destroys or injures any register-book or the counterfoil certificates thereof, or any part thereof, or any authenticated extract therefrom, Destroying or falsifying register-books.

or falsely makes or counterfeits any part of such register-book or counterfoil certificates,

or wilfully inserts any false entry in any such register-book or counterfoil certificate or authenticated extract,

shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

76. The prosecution for every offence punishable under this Act shall be commenced within two years after the offence is committed. Limitation of prosecutions under Act.

PART VIII.

MISCELLANEOUS.

77. Whenever any marriage has been solemnized in accordance with the provisions of sections 4 and 5, it shall not be void merely on account of any irregularity in respect of any of the following matters, namely:— What matters need not be proved in respect of marriage in accordance with Act.

(1) any statement made in regard to the dwelling of the persons married, or to the consent of any person whose consent to such marriage is required by law:

(2) the notice of the marriage:

[1] This paragraph was added by s. 9 of the Indian Christian Marriage Act (1872) Amendment Act, 1891 (II of 1891), General Acts, Vol. IV.

(3) the certificate or translation thereof:

(4) the time and place at which the marriage has been solemnized:

(5) the registration of the marriage.

Correction of errors.

78. Every person charged with the duty of registering any marriage, who discovers any error in the form or substance of any such entry, may, within one month next after the discovery of such error, in the presence of the persons married, or, in case of their death or absence, in the presence of two other credible witnesses, correct the error, by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry, and add thereto the date of such correction, and such person shall make the like marginal entry in the certificate thereof.

And every entry made under this section shall be attested by the witnesses in whose presence it was made.

And in case such certificate has been already sent to the [1][Registrar General of Births, Deaths and Marriages], such person shall make and send in like manner a separate certificate of the original erroneous entry, and of the marginal correction therein made.

Searches and copies of entries.

79. Every person solemnizing a marriage under this Act, and hereby required to register the same,

and every Marriage Registrar or [1][Registrar General of Births, Deaths and Marriages] having the custody for the time being of any register of marriages, or of any certificate, or duplicate or copies of certificate, under this Act,

shall, on payment of the proper fees, at all reasonable times, allow searches to be made in such register, or for such certificate, or duplicate, or copies, and give a copy under his hand of any entry in the same.

Certified copy of entry in marriage-register, etc., to be evidence.

80. Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any marriage-register or certificate, or duplicate, required to be kept or delivered under this Act, of an entry of a marriage in such register, or of any such certificate or duplicate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further proof of such register or certificate or duplicate, or of any entry therein, respectively, or of such copy.

Sending certificates of certain marriages to

81. The [1][Registrar General of Births, Deaths and Marriages] and the officers appointed under section 56 shall, at the end of every quarter in each year, select, from the certificates of marriages forwarded to

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[1] These words were substituted for the words "Secretary to the Local Government" and "Secretary to a Local Government" respectively by s. 30 (*b*) of the Births, Deaths and Marriages Registration Act, 1886 (VI of 1886), General Acts, Vol. III.

them respectively during such quarter, the certificates of the marriages of which the Governor General in Council may desire that evidence shall be transmitted to England, Secretary of State for India.

and shall send the same certificates, signed by them respectively, to the Secretary to the Government of India in the Home Department, for the purpose of being forwarded to the Secretary of State for India and delivered to the Registrar General of Births, Deaths and Marriages [1][in England]:

Provided that, in the case of the Governments of Madras and Bombay, the said certificates shall be forwarded by such Governments respectively directly to the Secretary of State for India.

Local Government to prescribe fees.

82. Fees shall be chargeable under this Act for—

receiving and publishing notices of marriages;

issuing [2][certificates for marriage] by Marriage Registrars, and registering marriages by the same;

entering protests against, or prohibitions of, the issue of [3][certificates for marriage] by the said Registrars;

searching register-books or certificates, or duplicates of copies thereof;

giving copies of entries in the same under sections 63 and 79.

[4]The Local Government shall fix the amount of such fees respectively,

and may from time to time vary or remit them either generally or in special cases, as to it may seem fit.

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[1] These words were added by s. 30 (*d*) of the Births, Deaths and Marriages Registration Act, 1886 (VI of 1886), General Acts, Vol. III.

[2] The words " certificates for marriage " were substituted for the words " certificate of marriages " by the Repealing and Amending Act, 1903 (I of 1903), s. 3 and Sch. II, General Acts, Vol. V.

[3] These words were substituted for the words " marriage certificates " by the Repealing and Amending Act, 1903 (I of 1903), s. 3 and Sch. II, General Acts, Vol. V.

[4] For notifications fixing the amount of such fees in—

(1) Ajmer-Merwara, *see* Aj. R. & O.;
(2) Assam, *see* Assam Gazette, 1901, Pt. II, p. 397;
(3) Baluchistan, *see* Bal. Code;
(4) Bengal, *see* Ben. R. & O.;
(5) Bombay, *see* Bom. R. & O.;
(6) Burma, *see* Bur. R. M.;
(7) Central Provinces, *see* C. P. R. & O.;
(8) Madras, *see* Fort St. George Gazette, 1905, Pt. I, p. 636;
(9) Punjab (including the North-West Frontier Province), *see* Punj. R. & O.;
(10) United Provinces of Agra and Oudh, *see* North-Western Provinces and Oudh Local Rules and Orders, 1894, p. 42;

Power to make rules.

83. The Local Government may make rules [1] in regard to the disposal of the fees mentioned in section 82, the supply of register-books, and the preparation and submission of returns of marriages solemnized under this Act.

Power to prescribe fees and rules for Native States.

84. The powers conferred on the Local Government by sections 82 and 83 may, so far as regards Native States, be exercised by the Governor General in Council.[2]

Power to declare who shall be District Judge.

85. The Local Government may, by notification in the official Gazette, declare who shall, in any place to which this Act applies, be deemed to be the District Judge.[3]

Powers to delegate function under this Act of Governor General in Council.

86. The powers and functions given by this Act to the Governor General in Council may be delegated to and exercised by such officers as the Governor General in Council from time to time [4] appoints in this behalf.

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[1] For rules under s. 83 for—
(1) Assam, *see* Assam Gazette, 1901, Pt. II, p. 397;
(2) Baluchistan, *see* Bal. Code;
(3) Bengal, *see* Ben. R. & O.;
(4) Burma, *see* Bur. R. M.
(5) Central Provinces, *see* C. P. R. & O.;
(6) Madras, (applicable also to the Native States of Travancore, Cochin, Pudukottai, Sandur and Banganapalli), *see* Fort St. George Gazette, 1905, Pt. I, p. 636;
(7) Punjab (including North-West Frontier Province), *see* Punj. R. & O.;
(8) United Provinces, *see* North-Western Provinces and Oudh Local Rules and Orders, 1894, p. 42.

[2] For notification issued by the Governor General in Council for all Native States, except those which are situate within, or border on, the Presidencies of Fort St. George and Bombay, but including the territories of the Maharaja of Mysore and the Baluchistan Agency Territories, *see* Brit. Enact. N. S. (W. I.), Ed. 1900, p. 16, and *ibid.* (N. I.), Ed. 1899, p. 323, for the Baluchistan Agency Territories.

For notification as to retention of fees by Marriage Registrars in Native States situate within the limits of the Madras Presidency, *see ibid.* (Mad. & My.), 1900, p. 24.

For notification by the Government of Madras in respect of rules under ss. 82 and 83, *see* Fort St. George Gazette, 1905, Pt. I, p. 637.

[3] For District Judges under the Act appointed for—
(1) Ajmer-Merwara, *see* Aj. R. & O.;
(2) Assam, *see* Assam Gazette, 1901, Pt. II, p. 397;
(3) Bengal, *see* Ben. R. & O.;
(4) Bombay, *see* Bom. R. & O.;
(5) Central Provinces, *see* C. P. R. & O.;
(6) Punjab (including the North-West Frontier Province), *see* Punj. R. & O.;
(7) United Provinces of Agra and Oudh, *see* North-Western Provinces and Oudh Local Rules and Orders, 1894, p. 42.

[4] For notifications delegating powers and functions under ss. 6, 8 and 9 to (1) the Agent to the Governor General in Baluchistan, *see* Brit. Enact. N. S. (N. I.), 1899, p. 322; (2) the Lieutenant-Governors of Bengal, the United Provinces of Agra and Oudh, the Punjab and Burma, and the Chief Commissioners of Assam and the Central Provinces, for States under those Provinces, *see ibid*, p. 24; (3) the Agent, Governor General, Central India, for States under that Agency, *see ibid*, (C. I.), 1899, p. 45; (4) the Resident in Mysore for that State, *see ibid* (Mad. and My.), p. 47; (5) the Resident at Hyderabad for the Hyderabad State, *see ibid* (Hyd.), 1900, p. 24; (6) the Agent, Governor General, Rajputana, for the Rajputana States, *see ibid* (Raj.), 1899, p. 29; (7) as to States under the Government of Bombay, *see* under the several Agencies in *ibid* (W. I.), Ed. 1900.

And all such powers and functions may be exercised, as regards Native States [1][situate within or bordering on] the Presidencies of Fort Saint George [2] and Bombay, by the Governors in Council of those Presidencies respectively.

Saving of Consular marriages.

87. Nothing in this Act applies to any marriage performed by any Minister, Consul or Consular Agent between subjects of the State which he represents and according to the laws of such State.

Non-validation of marriages within prohibited degrees.

88. Nothing in this Act shall be deemed to validate any marriage which the personal law applicable to either of the parties forbids him or her to enter into.

[1] These words were substituted for the words "situate within the local limits of" by s. 10 of the Indian Christian Marriage Act (1872) Amendment Act, 1891 (II of 1891), General Acts, Vol. IV, and are to be read as if enacted when Act XV of 1872 was passed.

[2] As to notification by Government of Madras, *see* notes under ss. 82, 83, 84.

SCHEDULE I.

(See sections 12 and 38.)

NOTICE OF MARRIAGE.

To a Minister [*or* Registrar] of

I hereby give you notice that a marriage is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described (that is to say):

Names.	Condition.	Rank or profession.	Age.	Dwelling place.	Length of residence.	Church, chapel or place of worship in which the marriage is to be solemnized.	District in which the other party resides, when the parties dwell in different districts.
James Smith.	*Widower.*	*Carpenter.*	*Of full age.*	*16, Clive Street.*	*23 days.*	*Free Church of Scotland Church, Calcutta.*	
Martha Green.	*Spinster.*	.....	*Minor.*	*20, Hastings Street.*	*More than a month.*		

Witness my hand, this day of *seventy-two.*

(*Signed*) *JAMES SMITH.*

[The *italics* in this schedule are to be filled up, as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.]

SCHEDULE II.

(See sections 24 and 50.)

CERTIFICATE OF RECEIPT OF NOTICE.

I,

do hereby certify that, on the day of , notice was duly entered in my Marriage Notice Book of the marriage intended between the parties therein named and described, delivered under the hand of one of the parties (that is to say):—

Names.	Condition.	Rank or profession.	Age.	Dwelling place.	Length of residence.	Church, chapel or place of worship in which the marriage is to be solemnized.	District in which the other party resides, when the parties dwell in different districts.
James Smith.	*Widower.*	*Carpenter.*	*Of full age.*	*16, Clive Street.*	*23 days.*	*Free Church of Scotland Church, Calcutta.*	
Martha Green.	*Spinster.*	.....	*Minor.*	*20, Hastings Street.*	*More than a month.*		

and that the declaration, [1][or oath] required by section 17 or 41 of the Indian Christian Marriage Act, 1872, has been duly made by the said (*James Smith*). XV of 1872.

Date of notice entered
Date of certificate given } The issue of this certificate has not been prohibited by any person authorized to forbid the issue thereof.

Witness my hand, this day of *seventy-two.*

(*Signed*)

This certificate will be void, unless the marriage is solemnized on or before the day of

[The *italics* in the schedule are to be filled up, as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.]

[1] These words were added by the Repealing and Amending Act, 1903 (I of 1903), s. 3, General Acts, Vol. V.

(*Schedule III.—Form of Register of Marriages.*)

SCHEDULE III.

(*See sections 28 and 31.*[1])

FORM OF REGISTER OF MARRIAGES.

Quarterly Returns

of

MARRIAGES

for

The Archdeaconry of { *Calcutta.* / *Madras.* / *Bombay.* }

I,——————, Registrar of the Archdeaconry of { *Calcutta,* / *Madras,* / *Bombay,* }

do hereby certify that the annexed are correct copies of the originals and Official Quarterly Returns of Marriage within the Archdeaconry of { *Calcutta,* / *Madras,* / *Bombay,* } as made and transmitted to me for the quarter commencing the day of ending the day of in the year of Our Lord

[*Signature of Registrar.*]

Registrar of the Archdeaconry of { *Calcutta,* / *Madras,* / *Bombay,* }

MARRIAGES solemnized at { *Allahabad,* / *Barrackpore,* / *Bareilly,* / *Calcutta, etc., etc.* }

When Married.			Names of Parties.		Age.	Condition.	Rank or profession.	Residence at the time of marriage.	Father's name and surname.	By banns or license.	Signatures of the parties.	Signatures of two or more witnesses present.	Signature of the person solemnizing the marriage.
Year.	Month.	Day.	Christian.	Surname.									

[1] This reference was substituted for the original reference by Act XII of 1891, Second Schedule, General Acts, Vol. IV.

SCHEDULE IV.

(See sections 32 and 54.)

MARRIAGE REGISTER BOOK.

Number.	When Married.			Names of Parties.		Age.	Condition.	Rank or profession.	Residence at the time of marriage.	Father's name and surname.
	Day.	Month.	Year.	Christian name.	Surname.					
1				*James*	*White*	*26 years*	*Widower*	*Carpenter*	*Agra*	*William White.*
				Martha	*Duncan*	*17 years*	*Spinster*	...	*Agra*	*John Duncan*

Married in the

This marriage was solemnized between us { *James White,* / *Martha Duncan,* } in the presence of us { *John Smith* / *John Green* }.

(*Schedule IV.—Certificate of Marriage.*)

Certificate of Marriage.

Number.	When Married.			Names of Parties.		Age.	Condition.	Rank or profession.	Residence at the time of marriage.	Father's name and surname.
	Day.	Month.	Year.	Christian name.	Surname.					
				James	*White*	*26 years*	*Widower*	*Carpenter*	*Agra*	*William White.*
				Martha	*Duncan*	*17 years*	*Spinster*	...	*Agra*	*John Duncan.*

Married in the

This marriage was solemnized between us { *James White,* / *Martha Duncan,* } in the presence of us { *John Smith* / *John Green* }

(*Schedule V.—Enactments repealed.*)

SCHEDULE V.

(*See section 2.*)

ENACTMENTS REPEALED.

Number and year.	Title.	Extent of Repeal.
Statute 58 Geo. 3, cap. 84.	An Act to remove Doubts as to the Validity of certain marriages had and solemnized within the British territories in India.	The whole.
Statute 14 & 15 Vict., cap. 40.	An Act for Marriages in India . .	The whole.
Act No. V of 1852 .	An Act for giving effect to the provisions of an Act of Parliament, passed in the 15th year of the reign of Her present Majesty, intituled "An Act for Marriages in India."	So much as has not been repealed.
Act No. V of 1865 .	The Indian Marriage Act, 1865 . .	The whole Act, except so far as it relates to the Straits Settlements.
Act No. XXII of 1866 .	An Act to extend the Indian Marriage Act, 1865, to the Hyderabad Assigned Districts, and the Cantonments of Secunderabad, Trimulgerry and Aurungabad.	The whole.

ACT No. XVIII OF 1872.[1]

[*29th August 1872.*]

An Act to amend the Indian Evidence Act, 1872.

Preamble.

WHEREAS it is expedient to amend the Indian Evidence Act, 1872;[2] I of 1872. It is hereby enacted as follows:—

Short title.

1. This Act may be called the Indian Evidence Act Amendment Act.

[*Commencement.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

Amendment of Act I of 1872, section 32, clauses (5) and (6).

2. In section 32 of the Indian Evidence Act, 1872,[2] clauses (5) and (6), after the word "relationship," the words "by blood, marriage or adoption" shall be inserted. I of 1872.

Amendment of section 41.

3. In section 41 of the same Act, lines 17, 20 and 23, after the word "judgment," the words "order or decree" shall be inserted.

Amendment of section 45.

4. In section 45 of the same Act, line 5, after the word "art," the words "or in questions as to identity of handwriting" shall be inserted.

Amendment of section 57.

5. In section 57 of the same Act, paragraph (13), after the word "road," the words "on land or at sea" shall be inserted.

Amendment of section 66.

6. In section 66 of the same Act, line 5, after the word "is," the words "or to his attorney or pleader" shall be inserted.

Amendment of section 91.

7. In section 91 of the same Act, *exception* 2, for the words "under the Indian Succession Act," the words "admitted to probate in British India," shall be substituted.

8. [*Amendment of section 92.*] *Rep. by the Repealing Act, 1876 (XII of 1876).*

Amendment of section 108.

9. In section 108 of the same Act, line 1, for the word "When," the words "Provided that when" shall be substituted; and, in the

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[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1872, Pt. V, p. 631; for Proceedings in Council, *see ibid*, 1872, Supplement, pp. 922, 923 and 950.

This Act has been declared in force in—

Upper Burma generally (except the Shan States), as amending Act I of 1872, *see* s. 4 (1) and the First Schedule, Burma Laws Act, 1898 (XII of 1898), Bur. Code;

the Arakan Hill District, *see* the Arakan Hill District Laws Regulation, 1874 (IX of 1874), s. 3, *ibid*; and

in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872) as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (III of 1899), Ben. Code.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), *infra*, to be in force in the following Scheduled Districts, namely :—

The Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum. (The District of Lohárdaga, now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44, then included the Palamau District, separated in 1894) .	*See* Gazette of India, 1881, Pt. 1, p. 504.
The North-Western Provinces Tarái	Ditto 1876, Pt. I, p. 505.

As to application of this Act, as being part of Act I of 1872, to other places, *see* the second footnote on p. 200, *supra*.

[2] Printed, *supra*, p. 200.

last line, for the word "on," the words "shifted to" shall be substituted.

10. In section 126 of the same Act, line 22, and in section 128 of the same Act, line 6, after the word "barrister," the word "pleader" shall be inserted. Amendment of sections 126 and 128.

In section 126 of the same Act, line 15, for the word "criminal," the word "illegal" shall be substituted.

11. In section 155 of the same Act, paragraph (2), for the word "had," the word "accepted" shall be substituted. Amendment of section 155.

12. [*Saving of Act XV of 1852, section 12.*] *Rep. by the Indian Oaths Act, 1873 (X of 1873).*

ACT No. XIX OF 1872.[1]

[*29th August 1872.*]

An Act to amend the definition of "Coin" contained in the Indian Penal Code.

WHEREAS it is expedient to amend the definition of "coin" contained in the Indian Penal Code,[2] section 230; It is hereby enacted as follows:— Preamble.

XLV of 1860.

1. For the first paragraph of the said section, the following shall be substituted:— Amendment of Act XLV of 1860, section 230. "Coin" defined.

"230. Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used."

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[1] Short title, The Indian Penal Code Amendment Act, 1872. *See* the Indian Short Titles Act, 1897 (XIV of 1897), General Acts, Vol. IV.

For the Statement of Objects and Reasons, *see* Gazette of India, 1872, Pt. V, p. 612; for Proceedings in Council, *see ibid*, 1872, Supplement, pp. 860, 923 and 952.

This Act has been declared in force in—

Upper Burma generally (except the Shan States), as amending Act XLV of 1860, *see* s. 4 (1) and the First Schedule, the Burma Laws Act, 1898 (XIII of 1898), Bur. Code;

the Arakan Hill District, *see* the Arakan Hill District Laws Regulation, 1874 (IX of 1874), s. 3, *ibid*; and

in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872), as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (III of 1899), Ben. Code.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, *infra*, to be in force in the following Scheduled Districts, namely:—

The Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum. (The District of Lohárdaga, now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44, then included the Palamau District, separated in 1894). *See* Gazette of India, 1881, Pt. I, p. 504.

The North-Western Provinces Tarái, *see* Gazette of India, 1876, Pt. I, p. 505.

As to application of this Act, as being part of Act XLV of 1860, to other places, *see* the second footnote under section 1 of that Act, General Acts, Vol. I.

[2] General Acts, Vol. I.

THE GOVERNMENT SAVINGS BANKS ACT, 1873.

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2. [*Repealed.*]
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4. Payment on death of depositor.
5. Payment to be a discharge.
   Saving of right of executor.
   Saving of right of creditor.
6. Security for due administration.
7. Power to administer oath.
   Penalty for false statements.
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9. Act not to apply to deposits belonging to estates of European soldiers or deserters.

Deposits belonging to Minors.

10. Payment of deposits to minor or guardian.
11. Legalization of like payments heretofore made.

Deposits belonging to Lunatics.

12. Payment of deposits belonging to lunatics.

Deposits made by married Women.

13. Payment of married women's deposits.

Rules.

14. Rules regulating certificates under section 8, and payments under section 10, 12 or 13.

ACT No. V OF 1873.[1]

[*28th January 1873.*]

An Act to amend the Law relating to Government Savings Banks.

Preamble.

WHEREAS it is expedient to amend the law relating to the payment of deposits in Government Savings Banks; It is hereby enacted as follows:—

Preliminary.

Short title.

1. This Act may be called the Government Savings Banks Act, 1873.

Local extent.

It extends to the whole of British India.

[*Commencement.*] *Rep. by the Repealing Act, 1874 (XVI of 1874).*

2. [*Repeal of Act XXVI of 1855.*] *Rep. by the Repealing Act, 1873 (XII of 1873).*

Interpretation-clause.

3. In this Act—

"depositor" means a person by whom, or on whose behalf, money has been heretofore, or shall be hereafter, deposited in a Government Savings Bank; and "deposit" means money so deposited:

"Secretary" includes every person empowered to manage a Government Savings Bank; and

"minor" means a person who has not completed the age of eighteen years.[2]

Deposits belonging to the Estates of deceased Persons.

Payment on death of depositor.

4. If a depositor dies, leaving in a Government Savings Bank a sum of money not exceeding one thousand rupees,

and if probate of his will or letters of administration of his estate, or a certificate granted under Act No. XXVII of 1860 (*for facilitating the collection of debts on successions, and for the security of parties*

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[1] For the Statement of Objects and Reasons to the Bill, which was based upon the Trustee Savings Banks Act, 1863 (26 & 27 Vict., c. 87), s. 30, *see* Gazette of India, 1872, Pt. V, p. 575; for Proceedings in Council, *see ibid*, 1872, Supplement, pp. 727, 743; *ibid*, 1873, Supplement, pp. 150 and 221.

Act V of 1873 has been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (III of 1899), Ben. Code, and in the Arakan Hill District by the Arakan Hill District Laws Regulation, 1874 (IX of 1874), s. 3, Bur. Code.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, *infra*, to be in force in the following Scheduled Districts, namely:—the Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum, *see* Gazette of India, 1881, Pt. I, p. 504. The District of Lohárdaga (now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44) included at this time this District of Palamau, separated in 1894.

It has been declared to be in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (1) and Sch. I, Bur. Code.

[2] *Cf.* The Indian Majority Act, 1875 (IX of 1875), *infra*.

paying debts to the representatives of deceased persons),[1] is not produced to the Secretary of such Bank within three months of the death of the said depositor,

the Secretary of such Bank may pay the said sum of money to any person appearing to him to be entitled to receive it, or to administer the estate of the deceased.

Payment to be a discharge.

5. Such payment shall be a full discharge from all further liability in respect of the money so paid:

Saving of right of executor.

But nothing herein contained precludes any executor or administrator, or other representative of the deceased, from recovering from the person receiving the same the amount remaining in his hands after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration.

Saving of right of creditor.

And any creditor or claimant against the estate of the deceased may recover his debt or claim out of the money paid under this Act or * *[2] Act No. XXVI of 1855,[3] to any person, and remaining in his hands unadministered, in the same manner and to the same extent as if the latter had obtained letters of administration of the estate of the deceased.

Security for due administration.

6. The Secretary of any such Bank may take such security as he thinks necessary from any person to whom he pays any money under section 4 for the due administration of the money so paid,

and he may assign the said security to any person interested in such administration.

Power to administer oath.

7. For the purpose of ascertaining the right of the person claiming to be entitled as aforesaid, the Secretary of any such Bank may take evidence on oath or affirmation according to the law for the time being relating to oaths and affirmations.[4] X of 1873.

Penalty for false statements.

Any person who, upon such oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed guilty of an offence under section 193 of the Indian Penal Code.[5] XLV of 1860.

Deposit when excluded in computing court-fees.

8. Where the amount of the deposit belonging to the estate of a deceased depositor does not exceed one thousand rupees, such amount shall be excluded in computing the fee chargeable, under the Court-fees VII of 1870.

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[1] *See* now the Succession Certificate Act, 1889 (VII of 1889), s. 2, General Acts, Vol. IV.

[2] The words "the said" were repealed by the Repealing and Amending Act, 1891 (XII of 1891).

[3] Act XXVI of 1855 was repealed by s. 2 of this Act.

[4] *Infra.*

[5] General Acts, Vol. I.

Act, 1870,[1] on the probate, or letters of administration, or certificate (if any), granted in respect of his property:[2]

Provided that the person claiming such probate or letters or certificate shall exhibit to the Court authorized to grant the same a certificate of the amount of the deposit in any Government Savings Bank belonging to the estate of the deceased. Such certificate shall be signed by the Secretary of such Bank, and the Court shall receive it as evidence of the said amount.

Act not to apply to deposits belonging to estates of European soldiers or deserters.

9. Nothing hereinbefore contained applies to money belonging to the estate of any European officer, non-commissioned officer or soldier dying in Her Majesty's service in India, or of any European who, at the time of his death, was a deserter from the said service.

Deposits belonging to Minors.

Payment of deposits to minor or guardian.

10. Any deposit made by, or on behalf of, any minor may be paid to him personally if he made the deposit, or to his guardian for his use if the deposit was made by any person other than the minor, together with the interest accrued thereon.

The receipt of any minor or guardian for money paid to him under this section shall be a sufficient discharge therefor.

Legalization of like payments heretofore made.

11. All payments of deposits heretofore made to minors or their guardians by any Secretary of a Government Savings Bank shall be deemed to have been made in accordance with law.

Deposits belonging to Lunatics.

Payment of deposits belonging to lunatics.

12. If any depositor becomes insane or otherwise incapable of managing his affairs,

and if such insanity or incapacity is proved to the satisfaction of the Secretary of the Bank in which his deposit may be,

such Secretary may, from time to time, make payments out of the deposit to any proper person,

and the receipt of such person, for money paid under this section, shall be a sufficient discharge therefor.

Where a committee or manager of the depositor's estate has been duly appointed, nothing in this section authorizes payments to any person other than such committee or manager.

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[1] *Supra.*

[2] *Cf.* the Savings Bank Act, 1828 (9 Geo. IV, c. 92), s. 40, now repealed by the Savings Banks Act, 1863 (26 & 27 Vict., c. 87).

Deposits made by Married Women.

Payment of married women's deposits.

13. Any deposit made by or on behalf of a married woman, or by or on behalf of a woman who afterwards marries, may be paid to her, whether or not the Indian Succession Act, 1865,[1] section 4, applies to her marriage; and her receipt for money paid to her under this section shall be a sufficient discharge therefor. X of 1865.

Rules.

Rules regulating certificates under section 8, and payments under section 10, 12 or 13.

14. All certificates under section 8, and all payments under section 10, section 12 or section 13, shall be respectively granted and made by the Secretary of the Bank, subject to such rules consistent with this Act as the Governor General in Council may, from time to time, prescribe.[2]

THE INDIAN OATHS ACT, 1873.

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PREAMBLE.

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2. [*Repealed.*]
3. Saving of certain oaths and affirmations.

II.—Authority to administer Oaths and Affirmations.

4. Authority to administer oaths and affirmations.

III.—Persons by whom Oaths or Affirmations must be made.

5. Oaths or affirmations to be made by—
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IV.—Forms of Oaths and Affirmation.

7. Forms of oaths and affirmations.
8. Power of Courts to tender certain oaths.
9. Court may ask party or witness whether he will make oath proposed by opposite party.

[1] General Acts, Vol. I.
[2] For such rules, *see* Gazette of India, 1888, Supplement, p. 695, and *ibid*, 1892, Pt. I, p. 207.

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11. Evidence conclusive as against person offering to be bound.
12. Procedure in case of refusal to make oath.

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13. Proceedings and evidence not invalidated by omission of oath or irregularity.
14. Persons giving evidence bound to state the truth.
15. Amendment of Penal Code, sections 178 and 181.
16. Official oaths abolished.

SCHEDULE.—[*Repealed.*]

ACT No. X OF 1873.[1]

[*8th April 1873.*]

An Act to consolidate the law relating to Judicial Oaths, and for other purposes.

Preamble. WHEREAS it is expedient to consolidate the law relating to judicial

[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1873, Pt. V, p. 17; for Proceedings in Council, *see ibid*, 1872, Supplement, p. 889; *ibid*, 1873, Supplement, pp. 3, 233, 235 to 246, 281, 395, and 410; *ibid*, 1873, Extra Supplement, pp. 1 to 8.

For civil rules of practice made by the High Court of Madras under this Act, the Code of Civil Procedure (Act XIV of 1882) and certain other Acts, for observance by subordinate Civil Courts in that presidency except the Small Cause Court at Madras, *see* Fort St. George Gazette, 1905, Sup., p. 1.

Act X of 1873 has been declared in force in—

the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (III of 1899), Ben. Code;

the Arakan Hill District by the Arakan Hill District Laws Regulation, 1874 (IX of 1874), s. 3, Bur. Code;

Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (1) and Sch. I, Bur. Code;

British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890), s. 3, Bal. Code;

Angul District (with an exception) by the Angul District Regulation, 1894 (I of 1894), s. 3, Ben. Code.

It has further been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), printed *infra*, to be in force in the following Scheduled Districts, namely :—

The Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum. (The District of Lohárdaga then included the Palamau District, separated in 1894; Lohardaga is now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44)	*See* Gazette of India, 1881, Pt. I, p. 504.
The North-Western Provinces Tarái	Ditto 1876, Pt. I, p. 505.

The Scheduled Districts in Ganjám and Vizagapatam, *see* Fort St. George Gazette, 1898, Pt. I, p. 666, and Gazette of India, 1898, Pt. I, p. 869.

It has been extended, by notification under s. 5 of the same Act, to the Scheduled District of Coorg. *See* Gazette of India, 1876, Pt. I, p. 417.

(*I.—Preliminary.* *II.—Authority to administer Oaths and Affirmations.* *III.—Persons by whom Oaths or Affirmations must be made.*)

oaths, affirmations and declarations, and to repeal the law relating to official oaths, affirmations and declarations; It is hereby enacted as follows:—

I.—Preliminary.

Short title.

1. This Act may be called the Indian Oaths Act, 1873.

Local extent.

It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the territories of Native princes and States in alliance with Her Majesty.

[*Commencement.*] *Rep. by the Repealing Act, 1876 (XII of 1876).*

2. [*Repeal of enactments.*] *Rep. by the Repealing Act, 1873 (XII of 1873).*

Saving of certain oaths and affirmations.

3. Nothing herein contained applies to proceedings before Courts Martial,[1] or to oaths, affirmations or declarations prescribed by any law which, under the provisions of the Indian Councils Act, 1861,[2] the Governor General in Council has not power to repeal. 24 & 25 Vict., c. 67.

II.—Authority to administer Oaths and Affirmations.

Authority to administer oaths and affirmations.

4. The following Courts and persons are authorized to administer, by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law:—

(*a*) all Courts and persons having by law or consent of parties authority to receive evidence;

(*b*) the Commanding Officer of any military station occupied by troops in the service of Her Majesty:

Provided—

(1) that the oath or affirmation be administered within the limits of the station, and,

(2) that the oath or affirmation be such as a Justice of the Peace is competent to administer in British India.

III.—Persons by whom Oaths or Affirmations must be made.

Oaths or affirmations to be made by—

witnesses;

5. Oaths or affirmations shall be made by the following persons:—

(*a*) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or

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[1] *See* the Indian Articles of War (Act V of 1869), *supra*, the Indian Volunteers Act, 1869 (XX of 1869), *supra*, and the Indian Marine Act, 1887 (XIV of 1887), General Acts, Vol. IV.

[2] Coll. Stat., Vol. I.

before any Court or person having by law or consent of parties authority to examine such persons or to receive evidence;

(*b*) interpreters of questions put to, and evidence given by, witnesses; and — interpreters.

(*c*) jurors. — jurors.

Nothing herein contained shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

Affirmation by Natives or by persons objecting to oaths.

6. Where the witness, interpreter or juror is a Hindu or Muhammadan,

or has an objection to making an oath,

he shall, instead of making an oath, make an affirmation.

In every other case the witness, interpreter or juror shall make an oath.

IV.—Forms of Oaths and Affirmations.

Forms of oaths and affirmations.

7. All oaths and affirmations made under section 5 shall be administered according to such forms as the High Court may from time to time prescribe.[1]

And until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now in use.

[2] * * * * * * *

Power of Court to tender certain oaths.

8. If any party to, or witness in, any judicial proceeding offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

Court may ask party or witness whether he

9. If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in section 8, if such oath or affirmation is made by the other party to, or by any witness in, such

[1] For forms prescribed in—

Bombay	*see* Bom. R. & O.;
Burma	*see* Burma Laws List, Ed. 1897, p. 47;
Madras	*see* Mad. R. & O.;
United Provinces	*see* N. W. P. and Oudh List of Local Rules and Orders, Ed. 1894, p. 42;
Central Provinces	*see* C. P. R. & O.

[2] The explanation to section 7 was repealed by the Lower Burma Courts Act, 1900 (VI of 1900), s. 48 and Sch. II.

will make oath proposed by opposite party.

proceeding, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation:

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

Administration of oath if accepted.

10. If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or, if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed and return it to the Court.

Evidence conclusive as against person offering to be bound.

11. The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

Procedure in case of refusal to make oath.

12. If the party or witness refuses to make the oath or solemn affirmation referred to in section 8, he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

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13. No omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever, in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth.

Persons giving evidence bound to state the truth.

14. Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject.[1]

Amendment of Penal Code, sections 178 and 181.

15. The Indian Penal Code, sections 178 and 181, shall be construed as if, after the word "oath," the words "or affirmation" were inserted. XLV of 1860.

Official oaths abolished.

16. Subject to the provisions of sections 3 and 5, no person appointed to any office shall, before entering on the execution of the duties of his office, be required to make any oath, or to make or subscribe any affirmation or declaration whatever.

SCHEDULE.

[*Rep. by the Repealing Act, 1873 (XII of 1873).*]

[1] *Cf.* Act XLV of 1860, s. 191, General Acts, Vol. I.

THE ADMINISTRATOR GENERAL'S ACT, 1874.

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ACT No. II OF 1874.[1]

[*10th February 1874.*]

An Act to consolidate and amend the law relating to the office and duties of Administrator General.

WHEREAS it is expedient to consolidate and amend the law relating Preamble.

[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1872, Pt. V, p. 128; for discussions in Council, *see ibid*, 1871, Supplement, p. 1640; *ibid*, 1872, Supplement, p. 175; *ibid*, Extra Supplement, dated 20th September, 1873, p. 16; *ibid*, 1874, Supplement, p. 101, and Extra Supplement, dated 17th February, 1874, p. 15.

The Administrators General and Official Trustees Act, 1902 (V of 1902), should be read with, and taken as amending, this Act; *see* Act V of 1902, s. 10, General Acts, Vol. V.

Act II of 1874 has been declared in force in British Baluchistan, *see* the British Baluchistan Laws Regulation, 1890 (I of 1890), s. 3, Bal. Code; in the Santhál Parganas, *see* the Santhál Parganas Settlement Regulation (III of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (III of 1899), s. 3, Ben. Code; in the Hill District of Arakan, *see* the Arakan Hill District Laws Regulation, 1874 (IX of 1874), s. 3, Bur. Code; and in Angul and the Khondmals, *see* the Angul District Regulation, 1894 (I of 1894), s. 3, Ben. Code.

to the office and duties of Administrator General; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be called the Administrator General's Act, 1874.

Local extent.

It extends to the whole of British India and, so far as regards British subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty;

Commencement.

And it shall come into force at once.

Repeal of Acts.

2. Act No. XXIV of 1867 (*to consolidate and amend the law relating to the office and duties of Administrator General*) and Act No. XIX of 1869 (*to facilitate administration to the estates of deceased British subjects in the Hyderabad Assigned Districts*) and Act No. V of 1870 (so far as it relates to the Administrator General) are hereby repealed.

All things duly done under any of the enactments hereby repealed shall be considered as having been done under this Act.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

"Presidency of Bengal."

"Presidency of Bengal" [1] includes—

(*a*) the territories for the time being respectively under the governments of the Lieutenant-Governors of Bengal, the North-Western Provinces and the Punjab;

(*b*) the territories for the time being respectively under the administrations of the Chief Commissioners of Oudh, the Central Provinces, Burma,[2] Ajmere and Merwára, Assam and the Andaman and Nicobar Islands;

The Act has been declared, under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), printed *infra*, to be in force in the following Scheduled Districts, namely :—

the Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum, *see* Gazette of India, 1881, Pt. I, p. 504. The District of Lohárdaga then included the Palamau District, separated in 1894; Lohárdaga is now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44.

The Act has been extended, under s. 5 of the same Act, to the North-Western Provinces Tarái, *see* Gazette of India, 1876, Pt. I, p. 505.

The act has been declared in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (1) and Sch. I, Bur. Code.

It has also been extended to the Shan States, *see* s. 4 and Schedule to the Shan States Laws and Criminal Justice Order, 1895, printed, Burma Gazette, 1895, Pt. I, p. 262.

[1] For power to divide the "Presidency of Bengal" into Provinces, *see* s. 68, *infra*.

[2] "Burma" was substituted for "British Burma" in s. 3 by the Indian Succession Law Amendment Act, 1890 (II of 1890), s. 10, General Acts, Vol. IV.

(*c*) such of the dominions of Princes and States aforesaid as the Governor General in Council may, by notification in the Gazette of India, from time to time direct:[1]

"Presidency of Madras" includes— "Presidency of Madras."

(*a*) the territories for the time being under the government of the Governor of Fort St. George in Council;

(*b*) such of the dominions aforesaid as the Governor General in Council may, by notification in the Gazette of India, from time to time direct;[1]

(*c*) Coorg;

(*d*) Mysore:

"Presidency of Bombay" means— "Presidency of Bombay."

(*a*) the territories for the time being under the government of the Governor of Bombay in Council [2][and under the administration of the Chief Commissioner of British Baluchistan;]

(*b*) such of the dominions aforesaid as the Governor General in Council may, by notification in the Gazette of India, from time to time direct:[1]

(*c*) the Hyderabad Assigned Districts:

"Presidency-town" means the town of Calcutta, Madras or Bombay, as the case may be: "Presidency-town."

"Government" means the Governor General in Council, so far as the Act relates to the Presidency of Bengal; the person for the time being administering the executive government of the Presidency of Fort St. George, so far as the Act relates to the Presidency of Madras; and the person for the time being administering the executive government of the Presidency of Bombay, so far as the Act relates to the Presidency of Bombay: "Government."

"letters of administration" shall include any letters of administration, whether general or limited, or with a will annexed, and letters *ad colligenda bonâ:* "Letters of administration."

"next of kin" includes a widower or widow of a deceased person, or any other person who, by law and according to the practice of the Courts, would be entitled to letters of administration in preference to a creditor or legatee of the deceased: "Next of kin."

"officer" means a commissioned officer of Her Majesty's Army, or of Her Majesty's Indian Army: "Officer."

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[1] For list of States notified under these clauses, *see* Gazette of India, 1878, Pt. I, p. 438, and *ibid*, 1890, Pt. I, p. 247.

[2] These words in s. 3 were added by the Indian Succession Law Amendment Act, 1890 (II of 1890), s. 10, General Acts, Vol. IV.

"Soldier." "soldier" means a soldier of Her Majesty's Army, or European soldier of Her Majesty's Indian Army, including a warrant and a non-commissioned officer:

"assets" includes immoveable as well as moveable property.

PART II.

OF THE OFFICE OF ADMINISTRATOR GENERAL.

Designation of the Administrators General in the three Presidencies.

4. In each of the Presidencies of Bengal, Madras and Bombay, there shall be an Administrator General.[1]

The said Administrators General shall be called respectively the Administrator General of Bengal, the Administrator General of Madras, and the Administrator General of Bombay.

Appointment, suspension and removal of Administrators General.

5. Such officers shall be appointed and may be suspended or removed by the authorities hereinafter mentioned, respectively; that is to say:—

the Administrator General of Bengal, by the Governor General in Council:

the Administrator General of Madras, by the Government of Fort St. George; and

the Administrator General of Bombay, by the Government of Bombay.

Qualification of future and continuance of existing incumbents.

6. Any person hereafter appointed to the office of Administrator General or officiating Administrator General of any of the said Presidencies shall be a member of the Bar of England or Ireland, or of the Faculty of Advocates in Scotland; but any person now holding such office shall continue to hold the same, subject to the provisions contained in the other sections of this Act.

Administrator General not an officer of High Court.

7. The Administrator General shall not be deemed in that capacity to be an officer of any High Court.

Probates, etc., granted by Supreme Courts to Ecclesiastical Registrars to have same effect as if granted to Administrator General.

8. All probates and letters of administration granted by any of the late Supreme Courts of Judicature to the Ecclesiastical Registrar of such Court in virtue of his office shall have the same effect in all respects as to any act hereafter to be done or required to be done under this Act, as if they had been granted to the Administrator General.

No Administrator General to be Ec-

9. No person now holding the office of Administrator General, or hereafter to be appointed to such office in any of the said Presidencies,

[1] For power to divide the "Presidency of Bengal" into provinces and to appoint an Administrator General for each province, *see* s. 68, *infra*.

shall hold the office of Ecclesiastical Registrar; nor, without the express sanction of Government, any other office together with that of Administrator General:

Ecclesiastical Registrar.

Provided that the Administrator General of the Presidency may be appointed Official Trustee under Act No. XVII of 1864[1] (*to constitute an office of Official Trustee*):

Administrator General not to hold any other office without sanction of Government.

[2]* * * * * * *

10. It is hereby declared to be an offence punishable in manner provided by section 168 of the Indian Penal Code,[3] for any Administrator General to trade or traffic for his own benefit, or for the benefit of any other person, unless so far as appears to him to be expedient for the due management of the estates which come into his charge under the provisions of this Act, and for the sole benefit of the several persons entitled to the proceeds of such estates respectively; but this exception is not to be construed to alter the civil liabilities of the Administrator General as trustee of such estates.

Penalty for trading.

XLV of 1860.

Exception.

11. Unless the Governor General in Council, or the Government, with the sanction of the Governor General in Council, otherwise orders, every Administrator General hereafter to be appointed shall give security to the Secretary of State for India, for the due execution of his office, for one lakh of rupees by his own bond, and for another lakh of rupees, or for separate sums amounting together to one lakh of rupees, by the deposit of Government securities, or by the joint and several bond or bonds of two or more sureties to be approved by Government, or partly by such deposit and partly by such bond or bonds:

Security to be given by Administrator General.

Provided that every Administrator General may, with the consent of Government, substitute either of the said two last-mentioned kinds of security for another previously given for such last-mentioned lakh or any part of it:

Substitution of security or sureties.

and every Administrator General may, with the consent of Government, and shall from time to time when required by Government so to do, cause fresh sureties to be substituted for any of those previously bound, so far as the security relates to the due execution of his office for the time then to come.

12. No Administrator General shall be required by any Court to enter into any administration-bond, or to give other security to the

No security nor oath to be required

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[1] General Acts, Vol. I.

[2] The second proviso was repealed by the Administrators General and Official Trustees Act, 1902 (V of 1902), s. 4 (1), General Acts, Vol. V. The proviso was as follows: "Provided also that the Administrator General of Bengal may hold the office of Receiver of the High Court of Judicature at Fort William."

[3] General Acts, Vol. I.

from Administrator General.

Court, on the grant of any letters of administration to him in virtue of his office.

No Administrator General shall be required to verify, otherwise than by his signature, any petition presented by him under the provisions of this Act, and, if the facts stated in any such petition are not within the Administrator General's own personal knowledge, the petition may be subscribed and verified by any person competent to make the verification.

Whoever makes a statement in any such petition which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

Appointment of officiating Administrator General.

13. Whenever any person holding the office of Administrator General obtains leave of absence, the Government may appoint some person to officiate as Administrator General, and such person, while so officiating, shall be subject to the same conditions and be bound by the same responsibilities as the Administrator General by any law for the time being in force, and he shall be deemed to be Administrator General for the time being under this Act, and shall be liable to give security under section 11 in like manner as if he had been appointed Administrator General.

PART III.

Of the Rights, Powers and Duties of the Administrator General.

(a) Grants of Letters of Administration and Probate to the Administrator General.

As regards Administrator General, High Court at Presidency-town to be deemed a Court of competent jurisdiction within meaning of Act X of 1865, sections 187 and 190.

14. So far as regards the Administrator General of any of the Presidencies of Bengal, Madras and Bombay, the High Court at the Presidency-town shall be deemed to be a Court of competent jurisdiction within the meaning of sections 187 and 190 of the Indian Succession Act, 1865,[1] wheresoever within the Presidency the property to be comprised in the probate or letters of administration may be situate. X of 1865.

[1] General Acts, Vol. I.

(Part III.—Of the Rights, Powers and Duties of the Administrator General.)

Administrator General entitled to letters of administration unless granted to next of kin.

15. Any letters of administration or letters *ad colligenda bona*, hereafter [1] [to] be granted by the High Court of Judicature at any Presidency-town, shall be granted to the Administrator General of the Presidency, unless they are granted to the next of kin of the deceased.

Administrator General entitled in preference to creditor, non-universal legatee or friend.

The Administrator General of the Presidency shall be deemed by all the Courts in the Presidency to have a right to letters of administration in preference to that of any person merely on the ground of his being a creditor, a legatee other than an universal legatee, or a friend of the deceased.

When Administrator General is to administer estates of persons other than Hindús, etc.

X of 1865.

16. If any person, not being a [2][Native Christian], Hindú, Muhammadan, [3][Parsí] or Buddhist, or a person exempted under the Indian Succession Act, 1865,[4] section 332, from the operation of that Act, shall have died, whether within any of the said Presidencies or not, and whether before or after the passing of this Act, and shall have left assets exceeding at the date of the death or within one year thereafter the value of one thousand rupees within any of the said Presidencies,

and if no person, to whom the Court would have jurisdiction to commit administration of such assets has, within one month after his death, applied in such Presidency for probate of his will, or for any letters of administration of his estate,

the Administrator General of the Presidency in which such assets are shall, within a reasonable time after he has had notice of the death of such person, and of his having left such assets as aforesaid, take such proceedings as may be necessary to obtain from the High Court at the Presidency-town letters of administration to the effects of such person, either generally or with a will annexed, as the case may require.

Whenever the Administrator General of the Presidency takes proceedings under this section, it shall be sufficient if the petition required by section 246 of the Indian Succession Act, 1865,[4] states—

X of 1865.

(*a*) the time and place of the deceased's death, to the best of the petitioner's knowledge or belief,

(*b*) that the deceased left some property within the Presidency as hereinbefore defined, and

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[1] The word " to " was inserted by the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol. IV.

[2] Inserted by the Native Christian Administration of Estates Act, 1901 (VII of 1901), s. 4, not, however, affecting any probate, letters of administration or certificate granted or vested under this Act: General Acts, Vol. V.

[3] The word "Parsí " in s. 16 was inserted by the Administrator General's Act, 1881 (IX of 1881), s. 2, General Acts, Vol. III.

[4] General Acts, Vol. I.

(*c*) the amount or value of assets which are likely to come into the petitioner's hands.

Power to direct Administrator General to apply for administration.

17. Whenever any person, whether a [1][Native Christian], Hindú, Muhammadan, [2][Parsí] or Buddhist, or not, shall have died leaving assets within the local limits of the ordinary original civil jurisdiction of the High Court at the Presidency-town, it shall be lawful for the Court,

upon the application of any person interested in such assets, or in the due administration thereof, either as a creditor, legatee, next of kin or otherwise, or

upon the application of a friend of any minor so interested, or

upon the application of the Administrator General,

if the applicant satisfies the Court that danger is to be apprehended of the misappropriation, deterioration or waste of such assets unless letters of administration of the effects of such person are granted,

to make an order, upon such terms as to indemnifying the Administrator General against costs and other expenses as the Court thinks fit, directing the Administrator General to apply for letters of administration of the effects of such person:

Administration to effects of Hindús, etc., when granted under this section. Costs of unnecessary application.

Provided that, in the case of an application being made under this section for letters of administration to the effects of a deceased [1][Native Christian], Hindú, Muhammadan, [2][Parsí] or Buddhist, or person exempted as aforesaid, the Court may refuse to grant letters of administration to any person, if it be satisfied that such grant is unnecessary for the protection of the assets; and in such case the Court shall make such order as to the costs of the application as it thinks just.

Power to enjoin Administrator General to collect and hold assets until right of succession or administration is ascertained.

18. Whenever any person, whether a [1][Native Christian], Hindú, Muhammadan, [2][Parsí] or Buddhist, or not, shall have died, whether before or after the passing of this Act, leaving assets within the local limits of the ordinary original civil jurisdiction of any of the said High Courts,

and such Court is satisfied that danger is to be apprehended of the misappropriation, deterioration or waste of such property, before it can be ascertained who may be legally entitled to the succession to such property, or whether the Administrator General is entitled to letters of administration to such deceased person,

the Court may authorize and enjoin the Administrator General to collect and take possession of such property, and to hold or deposit or invest the same according to the orders and directions of the Court,

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[1] Inserted by the Native Christian Administration of Estates Act, 1901 (VII of 1901), s. 4, not, however, affecting any probate, letters of administration or certificate granted or vested under this Act; *see* Act VII of 1901, General Acts, Vol. V.

[2] The word " Parsí " in ss. 17 and 18 was inserted by the Administrator General's Act, 1881 (IX of 1881), s. 2, General Acts, Vol. III.

and in default of any such orders or directions according to the provisions of this Act so far as the same are applicable to such property;

and the Administrator General shall be entitled to a commission of one *per centum* upon the amount of all moveable assets collected or received by him in pursuance of such order, and also to reimburse himself for all payments made by him in respect of the assets which a private administrator of such assets might lawfully have made; Rate of commission payable in such case.

and, in case letters of administration of any such property are afterwards granted to the Administrator General, the said commission of one *per centum* shall be deemed a part payment of the commission payable to the Administrator General under the letters of administration.

Any order of Court made under the provisions of this section shall entitle the Administrator General to collect and to take possession of such property, and, if necessary, to maintain a suit for the recovery thereof.

19. If in the course of proceedings to obtain letters of administration under the provisions of section 16 or section 17, Grant of probate to executor appearing in the course of proceedings taken by Administrator General.

any executor appointed by a will of the deceased appears according to the practice of the Court and proves the will and accepts the office of executor,

or if any person appears according to such practice and makes out his claim to letters of administration as next of kin of the deceased, and gives such security as is required of him by law or by the practice of the Court,

the Court shall grant probate of the will or letters of administration accordingly, and shall award to the Administrator General his costs of the proceedings so taken by him, to be paid out of the estate as part of the testamentary or intestate expenses thereof. Cost of proceedings taken by Administrator General to be paid out of estate.

20. If no person appears according to the practice of the Court and entitles himself to probate of a will, or to a grant of letters of administration as next of kin of the deceased, If no executor or next of kin appear or give necessary security, administration to be granted to Administrator General.

or if the person who entitles himself to a grant of administration neglects to give such security as may be required of him by law or according to the practice of the Court,

the Court shall grant letters of administration to the Administrator General.

21. The Administrator General shall, when duly authorized or required so to do by the Military Secretary to Government, secure and distribute the assets of the estate and effects of any officer, soldier or other person subject to any Articles of War, in all cases in which such estate and effects do not exceed in the whole five hundred rupees, charging the estate with a commission of three *per centum* only. Administrator General in certain cases to secure and distribute the effects of soldiers.

Proviso.

It shall not be necessary for the Administrator General to take out letters of administration in cases referred to in this section: but he shall have the same powers with regard to all such assets as he would have had if he had taken out such letters.

Power to grant Administrator General letters limited to purpose of dealing with assets in accordance with Regimental Debts Act.

22. When the Administrator General applies for letters of administration to the effects of any officer, soldier or other person subject to the Articles of War, the Court may grant to him letters of administration limited to the purpose of dealing with such effects in accordance with the provisions of the Regimental Debts Act, 1863,[1] or any other law for the time being in force relating to the payment of regimental debts and the distribution of the effects of officers dying on service. 26 & 27 Vict. c. 57.

Administrator General not precluded from applying for letters within one month after death.

23. Nothing in this Act is intended to preclude the Administrator General from applying to the Court for letters of administration in any case within the period of one month from the death of the deceased.

Effect of probate or letters granted to Administrator General.

[2] **23A.** Probate or letters of administration granted by the High Court at Calcutta, Madras or Bombay to the Administrator General of the Presidency of Bengal, Madras or Bombay, as the case may be, shall have effect over all the property and estate, moveable or immoveable, of the deceased throughout such Presidency,

and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property, to such Administrator General:

Provided that the High Court may direct, by its grant, that such probate or letters of administration shall have like effect throughout either or both of the other Presidencies.

Whenever a grant of probate or letters of administration is made by a High Court to the Administrator General, with such effect as last aforesaid, the Registrar of such Court shall send to each of the other two High Courts a certificate that such grant has been made, and such certificate shall be filed by the Court receiving the same.

After revocation, letters granted to Administrator General to be deemed as to him to

24. If any letters of administration granted to the Administrator General under the provisions of this Act be revoked or recalled, the same shall, so far as regards the Administrator General and all persons acting under his authority in pursuance thereof, be deemed to have been only voidable, except as to any act done by any such Administrator

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[1] Coll. Stat., Vol. II, Ed. 1881, p. 770.
[2] S. 23A was inserted by the Administrator General's Act, 1881 (IX of 1881), s. 3, General Acts, Vol. III.

General or other person as aforesaid, after notice of a will or of any other fact which would render such letters void:

have been voidable only. Exception. Proviso.

Provided that no notice of a will or of any other fact which would render any such letters void shall affect the Administrator General or any person acting under his authority in pursuance of such letters, unless, within the period of one month from the time of giving such notice, proceedings be commenced to prove the will, or to cause the letters to be revoked, nor unless such proceedings be prosecuted without unreasonable delay.

Payments made by Administrator General prior to revocation.

25. If any letters of administration granted under this Act be revoked upon the production and proof of a will, all payments made or acts done by or under the authority of the Administrator General in pursuance of such letters of administration prior to the revocation thereof, which would have been valid under any letters of administration lawfully granted to him with such will annexed, shall be deemed valid notwithstanding such revocation.

Recall of Administrator General's administration, and grant of probate, etc. to executor or next of kin.

26. If an executor or next of kin of the deceased, who has not been personally served with a citation or who has not had notice thereof in time to appear pursuant thereto, establish to the satisfaction of the Court a claim to probate of a will or to letters of administration in preference to the Administrator General, any letters of administration granted by virtue of this Act to the Administrator General may be re-called and revoked, and probate may be granted to such executor, or letters of administration granted to such other person as aforesaid:

Time within which application to revoke must be made.

Provided that no letters of administration granted to the Administrator General shall be revoked or re-called for the cause aforesaid, except in cases in which a will or codicil of the deceased is proved in the Presidency, unless the application for that purpose be made within six months after the grant to the Administrator General, and the Court be satisfied that there has been no unreasonable delay in making the application, or in transmitting the authority under which the application is made.

Costs of obtaining administration, etc., may, on revocation, be ordered to be paid to Administrator General out of assets.

27. If any letters of administration granted to the Administrator General in pursuance of this Act be revoked, the Court may order the costs of obtaining such letters of administration, and the whole or any part of any commission which would otherwise have been payable under this Act, together with the costs of the Administrator General in any proceedings taken to obtain such revocation, to be paid to or retained by the Administrator General out of any assets belonging to the estate:

Provided that, in any such case, when the deceased has left a will appointing an executor, and probate of the will has been granted by any Court in the Presidency to such executor within three months after the death,

or when the widow or next of kin has, within one month if resident within the Presidency, or within three months if resident beyond the Presidency, obtained from any such Court letters of administration to the estate and effects of the deceased,

then and in either of such cases the Administrator General shall (without prejudice to the provisions contained in sections 17 and 18) not be entitled to receive or retain any commission out of any assets belonging to such estate and situate within the jurisdiction of the Court by which probate or administration has been granted as last aforesaid.

Distribution of assets.

[1] **28.** When the Administrator General has given such notices as would have been given by the High Court in an administration-suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution; and no notice of any claim shall affect him unless proceedings to enforce such claim are commenced within one month after the giving of such notice and prosecuted without unreasonable delay.

Nothing herein contained shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively.

Letters to be granted to Administrator General by his name of office. Authority given by such letters.

29. All letters of administration granted to any Administrator General in virtue of his office shall be granted to him by his name of office,

and all letters of administration heretofore granted to the Ecclesiastical Registrar or Administrator General officially, or granted to any Administrator General in virtue of his office, shall authorize the Administrator General for the time being of the same Presidency to act as administrator of the estate to which such letters relate.

Grant of probate to Administrator General named as executor by virtue of his office.

30. Every probate granted to any Administrator General of a will wherein he is named as executor by virtue of his office shall be granted to him by his name of office, and shall authorize the Administrator General for the time being of the same Presidency to act as executor of the estate to which such probate relates.

Transfer by private executor or administrator

31. Any private executor or administrator may, with the previous consent of the Administrator General of the Presidency in which the property comprised in the probate or letters of administration is situate,

[1] This section was substituted for the original s. 28 by the Administrator General's Act, 1881 (IX of 1881), s. 4, General Acts, Vol. III.

by an instrument in writing under his hand, * * * * [1] notified in the local Gazette, transfer all estates, effects and interests vested in him by virtue of such probate or letters to the Administrator General by his name of office; of interest under probate or letters.

and thereupon the transferor shall be exempt from all liability as such executor or administrator, as the case may be, for any act or omission in respect of the said property after the date of the said transfer:

and the Administrator General for the time being shall have the rights and be subject to the liabilities which he would have had, and to which he would have been subject, if the probate or letters of administration, as the case may be, had been granted to him by his name of office at the date aforesaid.

Nothing herein contained shall be taken to exempt any such transferor from liability for acts and omissions in respect of the said property prior to the transfer.

32. Whenever the Administrator General carries over assets to separate accounts in his books, he shall notify the fact in the local official Gazette; and he may, with the consent of the Official Trustee, and subject to such rules as the Governor General in Council may from time to time prescribe in this behalf, appoint the Official Trustee to be the trustee of such assets; and upon such appointment such assets shall vest in the Official Trustee and his successors in office, and be held by him and them upon the same trusts as the same assets were held immediately before such appointment. And for the purposes of Act No. XVII of 1864 [2] such assets shall be deemed to have been vested in the Official Trustee under section 10 of that Act. Appointment of Official Trustee as trustee of assets carried to separate accounts.

33. All estates, effects and interests which, at the time of the death, resignation or removal from office of any Administrator General, are vested in him by virtue of such letters of administration, probates or transfers as aforesaid, shall, upon every such death, resignation or removal, cease to be vested in him, and shall vest in his successor in office immediately upon his appointment thereto. Vesting of estates etc. in successor of Administrator General.

All books, papers and documents kept by such Administrator General by virtue of his office or as such executor or transferee as aforesaid shall be transferred to and vested in his successor in office.

(*b*) *Suits by and against the Administrator General.*

34. All suits and other proceedings commenced by or against any Administrator General in his representative character may be brought by or against him by his name of office, Administrator General to sue and be sued in his name of office.

[1] The words " bearing a stamp of ten rupees and " were repealed by the Indian Stamp Act, 1879 (I of 1879).

[2] General Acts, Vol. I.

Suit not to abate by death, etc.

and no suit or other proceeding heretofore or hereafter commenced by or against any person as Administrator General, either alone or jointly with any other person, shall abate by reason of the death, resignation or removál from office of any such Administrator General; but the same may, by order of the Court, and upon such terms as to the service of notices or otherwise as the Court may direct, be continued by or against his successor immediately upon his appointment, in the same manner as if no such death, resignation or removal had occurred:

Proviso as to costs.

Provided that nothing hereinbefore contained shall render any such successor personally liable for any costs incurred prior to the order for continuing the suit against him.

Creditors' suits against Administrator General.

35. If any suit be brought by a creditor against any Administrator General in his representative character, the plaintiff shall be liable to pay the costs of the suit down to and including the decree, unless upon proof by affidavit or otherwise that not less than one month previous to the institution of the suit he had applied in writing to the Administrator General, stating the amount and other particulars of the claim, and supporting the same by such evidence as, under the circumstances of the case, the Administrator General was reasonably entitled to require, and that the Administrator General had refused or neglected to register the claim according to the practice of his office.

If in any such suit judgment is pronounced in favour of the plaintiff, he shall, nevertheless, be only entitled to payment out of the assets of the deceased equally and rateably with the other creditors.

(c) Grant of Certificates by the Administrator General.

In what case Administrator General may grant certificate.

36. Whenever any person * * * * [1] shall have died, whether within any of the said Presidencies or not, whether before or after the passing of this Act, and whether testate or intestate, and shall have left assets (whether moveable or immoveable, or both) within any of the said Presidencies, and the Administrator General of such Presidency is satisfied that such assets do not exceed in the whole one thousand rupees in value,

he may, after the lapse of one month from the death if he thinks fit, or before the lapse of the said month if he is requested so to do by writing under the hand of the executor or the widow or other person entitled to administer the effects of the deceased, grant to any person, claiming otherwise than as a creditor to be entitled to a share of such assets, certificates under his hand entitling the claimant to receive the

[1] The words and figures "not being a Hindú, Muhammadan or Buddhist, or exempted under the Indian Succession Act, 1865, section 332, from the operation of that Act," were repealed by the Administrator General's Act, 1881 (IX of 1881), s. 5, General Acts, Vol. III.

property therein mentioned, belonging to the estate of the deceased, to a value not exceeding in the whole one thousand rupees:

Provided that no certificate shall be granted under this section where probate of the deceased's will or letters of administration of his effects has or have been granted, or in respect of any sum of money deposited in a Government Savings Bank.

No certificate where probate or administration granted or for money in Government Savings Bank.

Grant of certificate to creditors.

[1] **37.** If, in cases falling within section 36, no person claiming otherwise than as a creditor to be entitled to a share of the effects of the deceased obtains, within three months, a certificate from the Administrator General under the same section, or letters of administration to the estate and effects of the deceased, and such deceased was not a [2][Native Christian], Hindú, Muhammadan, Parsí or Buddhist, or exempted under the Indian Succession Act, 1865,[3] section 332, from the operation of that Act, the Administrator General may administer the estate and effects without letters of administration, in the same manner as if such letters had been granted to him;

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and if he neglect or refuse to take upon himself the administration of the estate and effects, he shall, upon the application of a creditor and upon being satisfied of his title, grant a certificate in the same manner as if such creditor were entitled to a share of the effects of the deceased,

and such certificate shall have the same effect as a certificate granted under the provisions of the same section, and shall be subject to all the provisions of this Act which are applicable to such certificate:

Proviso.

Provided that the Administrator General may before granting such certificate, if he think fit, require the creditor to give reasonable security for the due administration of the estate and effects of the deceased.

Administrator General not bound to grant certificate unless satisfied of claimants' title, etc.

38. The Administrator General shall not be bound to grant any [4][certificate under section 36 or 37,] unless he be satisfied of the title of the claimant and of the value of the assets of the deceased, either by the oath or affirmation of the claimant, * * * * *[5] or by such other evidence as he requires.

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[1] The first paragraph of s. 37 was substituted for the original paragraph by the Indian Succession Law Amendment Act, 1890 (II of 1890), s. 11 (*1*), General Acts, Vol. IV.

[2] Inserted by the Native Christian Administration of Estates Act, 1901 (VII of 1901), s. 4 : not, however, affecting any probate, letters of administration or certificate granted or vested under this Act; General Acts, Vol. V.

[3] General Acts, Vol. I.

[4] These words were substituted for the words " any such certificate " by the Administrator General's Act, 1881 (IX of 1881), s. 6, General Acts, Vol. III.

[5] The words " (which oath or affirmation the Administrator General is hereby authorized to administer or take)," were repealed by the Administrator General's Act, 1881 (IX of 1881), s. 6, General Acts, Vol. III.

Copy of certificate with receipt annexed when signed by certificate-holder, to be a discharge.

39. A copy of any such certificate with a receipt annexed shall, when such copy and receipt are signed by the person to whom the certificate has been granted, be a full discharge for payment or delivery to him of the money or security for money therein mentioned, to the person paying or delivering the same:

Right of executor or administrator against certificate-holder.

but nothing in this Act shall preclude any executor or administrator of the deceased from recovering, from the person receiving the same, the amount remaining in his hands after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration.

Right of creditor against assets in hands of certificate-holder.

And any creditor or claimant against the estate of the deceased shall be at liberty to recover his debt or claim out of the assets received by such person and remaining in his hands unadministered, in the same manner and to the same extent as if such person had obtained letters of administration to the estate of the deceased.

Administrator General not bound to take out administration on account of effects for which he has granted certificate.

40. The Administrator General shall not be bound to take out letters of administration to the estate of any deceased person on account of the effects in respect of which he grants any such certificate, but he may do so if he discover any fraud or misrepresentation made to him, or that the value of the estate exceeded one thousand rupees.

Fee for certificate.

41. For every such certificate the Administrator General shall be entitled to charge a fee calculated after the rate of three rupees in the hundred on the amount mentioned in the certificate.

Transfer of certain assets from British India to executor or administrator in country of domicile or distribution.

[1] **41A.** Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death, and proceedings for the administration of his estate with respect to assets in British India have been taken under section 36 or section 37, and there has been a grant of administration in the country of domicile with respect to the assets in that country,

the holder of the certificate granted under section 36 or section 37, or the Administrator General, as the case may be, after having given such notices as the High Court may by any general rule to be made from time to time prescribe, for creditors and others to send in to him their claims against the estate of the deceased, and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the

[1] S. 41A was inserted by the Indian Succession Law Amendment Act, 1890 (II of 1890), s. 12, General Acts, Vol. IV.

executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

(*d*) *Expenses of the Administrator General's Establishment.*

Administrator General to defray expenses of establishment.

42. The Administrator General shall defray all the expenses of the establishment necessary for his office, and all other charges to which the said office is subject, except those for which express provision is made by this Act.

(*e*) *Accounts and Schedules.*

Administrator General to keep separate account for each estate.

43. The Administrator General of each of the said Presidencies shall enter into books, to be kept by him for that purpose, separate and distinct accounts of each estate, and of all such sums of money, bonds and other securities for money, goods, effects and things as come to his hands, or to the hands of any person employed by him or in trust for him under this Act; and likewise of all payments made by him on account of such estate and of all debts due by or to the same, specifying the dates of such receipts and payments respectively.

Accounts to be open to inspection on payment of fee.

Such books shall be kept in the Administrator General's office, and shall be open for the inspection of all such persons, practitioners in the said Courts and others, as may have occasion to inspect the same, at office hours, paying only such reasonable fee for the time being fixed by the Government and published in the official Gazette of the Presidency to which the same may relate.[1]

Administrator General to furnish half-yearly schedules.

44. The Administrator General of each of the said Presidencies shall twice in every year, that is to say, on or before the first day of April, and on or before the first day of October, or on such other days as the Government, by any rules or orders to be published as aforesaid, may direct, exhibit and deliver, in the High Court at Calcutta, Madras or Bombay, as the case may be,—

(*a*) a schedule showing the gross amount of all sums of money received or paid by him on account of each estate in his charge, and the balances, during the period of six months ending severally on the thirty-first day of December and thirtieth day of June next before the day of delivering such schedule,

(*b*) a list of all bonds or other securities received on account of each of the said estates during the same period,

[1] For fees prescribed under this section—
(*a*) for the Presidency of Bengal, *see* Gazette of India, 1867, p. 566. This order is kept in force by para. 2 of s. 2 of this Act, *vide supra;*
(*b*) by the Government of Bombay, *see* Bom. R. & O.

(*c*) a schedule of all administrations whereof the final balances have been paid over to the persons entitled to the same, during the same period, specifying the amount of such balances and the persons to whom paid.

Schedules to be filed and published. Copies of schedules.

Such schedules shall be filed of record in such High Court, and shall, within fourteen days afterwards, be published in the official Gazette of the Presidency by the Administrator General; and copies thereof in triplicate shall be delivered by such Administrator General to the Government, and shall be sent by such Government to the Secretary of State for India, in order that such Secretary may, if he think fit, order the same to be deposited at the India Office for public inspection, and cause notices to be published in the London Gazette and other leading newspapers that such schedules are open to inspection there, or make such orders respecting the same as he thinks fit.

PART IV.

OF THE AUDIT OF THE ADMINISTRATOR GENERAL'S ACCOUNTS.

Government to appoint auditors.

45. The Government shall from time to time appoint auditors to examine the accounts of the Administrator General at the times of the delivery of the said schedules, and also at any other time when the Government thinks fit.

Auditors to examine schedules and report to Government.

46. The auditors shall examine the schedules and accounts, and report to the Government—

(*a*) whether they contain a full and true account of everything which ought to be inserted therein,

(*b*) whether the books which by this Act, or by any such general rules and orders as hereinafter mentioned, are directed to be kept by the Administrator General, have been duly and regularly kept, and

(*c*) whether the assets and securities have been duly kept and invested and deposited in the manner prescribed by this Act, or by any such rules and orders to be made as aforesaid.

Auditors to summon witnesses and to call for books, etc.

47. Every auditor shall have power to summon as well the Administrator General as any other person whose presence he thinks necessary, to attend him from time to time; and to examine the Administrator General or other person if he thinks fit, on oath or affirmation to be by him administered; and to call for all books, papers, vouchers and documents which appear to him to be necessary for the purposes of the said reference.

(*Part IV.—Of the Audit of the Administrator General's Accounts.*)

If the Administrator General or other person when summoned refuses, or, without reasonable cause, neglects to attend or to produce any book, paper, voucher or document so required, or attends and refuses to be sworn or make an affirmation, or refuses to be examined, the auditors shall certify such neglect or refusal in writing to the High Court at the Presidency-town;

and every person so refusing or neglecting shall thereupon be punishable in like manner as if such refusal or neglect had been in contempt of the said High Court. Penalty for non-attendance.

48. The costs and expenses of preparing and publishing the said schedules and copies thereof, and of every such reference and examination as aforesaid, shall be defrayed by all the estates to which such schedules or accounts relate. Costs of preparing schedules, etc.

Such costs and expenses, and the portion thereof to be contributed by each of the said estates, shall be ascertained and settled by the auditors, subject to the approval of the Government, and shall be paid out of the said estates accordingly by the Administrator General.

49. If upon any such reference and examination the auditors see reason to believe that the said schedules do not contain a true and correct account of the matters therein contained or which ought to be therein contained, or that the assets have not been duly kept and invested or deposited in the manner directed by this Act, or by any such rules and orders as aforesaid, or that the Administrator General has failed to comply with the provisions and directions of this Act or of any such rules and orders, they shall report accordingly to the Government. Special report to Government if accounts appear incorrect.

50. The Government may refer every such report as last aforesaid to the consideration of the Advocate General for the Presidency, who shall thereupon, if he think fit, proceed summarily against the defaulter or his executor or administrator in the High Court in the Presidency-town, by petition for an account, or to compel obedience to this Act or to such rules and orders as aforesaid, or otherwise as he may think fit, in respect of all or any of the estates then or formerly under the administration of such defaulter; Proceedings upon such report.

And the said Advocate General may exhibit interrogatories to the said Administrator General, executor or administrator (hereinafter called the defendant), who shall be bound to answer the same as fully as if a commission had been issued under the provisions of the Code of Civil Procedure [1] for his examination upon the said interrogatories.

The Court shall have power upon any such petition to compel the attendance in Court of the defendant and any witnesses who may be thought necessary, and to examine them orally or otherwise as the said

[1] *See* now the Code of Civil Procedure, 1908 (Act V of 1908), General Acts, Vol. VI.

Court thinks fit, and to make and enforce such order or orders as the Court thinks just.

Costs of reference, etc. how to be defrayed.

51. The costs, including those of the Advocate General and of the reference to him, if the same be directed by the Court to be paid, shall be defrayed either by the defendant or out of the estates rateably as the said Court directs; and whenever any costs are recovered from the defendant the same shall be repaid to the estates by which they have been in the first instance contributed; and the Court may, if it think fit, order the defendant to receive his costs out of the said estates.

PART V.

Of the Commission of the Administrator General.

Commission to be received by Administrators General.

52. The Administrator General of each of the said Presidencies, under any letters of administration granted to him in his official character, or under any probate granted to him of a will wherein he is named as executor by virtue of his office, or under any probates or letters of administration vested in him by section 8 or section 31, shall be entitled to receive a commission at the following rates respectively, namely:—

The Administrator General of Bengal at the rate of three *per centum*, and the Administrators General of Madras and Bombay respectively at the rate of five *per centum*, upon the amount or value of the assets which they respectively collect and distribute in due course of administration.

Section 52 not to apply to property of officers and soldiers dying on service.

53. The last preceding section shall not apply to cases in which the property of an officer or soldier dying on service comes to the hands of the Administrator General of any of the said Presidencies, under the 9th or the 12th section of the Statute called the Regimental Debts Act, 1863;[1] 26 & 27 Vict., c. 57.

Commission on such property.

and such Administrator General shall not take a percentage on any such property exceeding three *per centum* on the gross amount coming to his hands after the passing of the Administrator General's Act, V of 1865. 1865,[2] if preferential charges as defined by the 4th section of the said Statute have been previously paid, or on the gross amount remaining in his hands after payment by him of such charges, as the case may be.

What expenses, etc., commission is to cover.

54. The Administrator General shall be entitled to reimburse himself for any payments made by him in respect of any estate in his charge, which a private administrator of such estate might have law-

[1] Coll. Stat., Vol. II, Ed. 1881, p. 770.
[2] Act IV of 1865 was repealed by Act XXIV of 1867 and the latter by the present Act.

fully made; but, save as aforesaid, the commission to which the Administrator General of each of the said three Presidencies shall be entitled is intended to cover, not merely the expense and trouble of collecting the assets, but also his trouble and responsibility in distributing them in due course of administration.

How payable.

It is therefore enacted that one-half of such commission shall be payable to and retained by such Administrator General upon the collection of the assets, and the other half thereof shall be payable to the Administrator General who distributes any assets in the due course of administration, and may be retained by him upon such distribution.

Commission retained to be deemed a distribution.

The amount of the commission lawfully retained by an Administrator General upon the distribution of assets shall be deemed a distribution in the due course of administration within the meaning of this Act.

Explanation.—The carrying of assets to separate accounts in the books of the Administrator General notified as hereinbefore provided, and the transfer of assets to the Official Trustee, shall each be deemed to be a distribution within the meaning of this section.

Commission of Administrator General of Bengal may be raised and again reduced.

55. The Governor General in Council may from time to time order the rate of commission hereinbefore authorized to be received by the Administrator General of Bengal to be raised to any rate not exceeding five *per centum* upon the amount or value of the assets which he collects and distributes in due course of administration, and again to be reduced.

Commission of Administrators General of Madras and Bombay may be reduced and again raised.

The Governments of the Presidencies of Fort St. George and Bombay respectively may, with the sanction of the Governor General in Council, from time to time order the aforesaid rate of commission hereby authorized to be received by the Administrators General of Madras and Bombay respectively to be reduced, and again to be raised:

Proviso.

Provided that the commission so to be received shall not at any time exceed five *per centum* of the assets collected, and that no person now holding the office of Administrator General of Bengal, Madras or Bombay shall, by any such order, be deprived of the right to receive and retain, for his own use, a commission at the rate of three *per centum* in respect of all assets collected and actually administered by him.

Commission on assets collected beyond Presidency.

[1] **55A.** Notwithstanding anything hereinbefore contained, an Administrator General of a Presidency obtaining probate or letters of administration operating in another Presidency shall be entitled to the same rate of commission in respect of the collection and distribution of assets collected in such Presidency as the Administrator General of

[1] S. 55A was inserted by the Administrator General's Act, 1881 (IX of 1881), s. 7, General Acts, Vol. III.

such Presidency would have been entitled to if such assets had been collected and distributed by him, and to no higher rate.

56. [1] * * * * * * * *

PART VI.

MISCELLANEOUS.

Power to make rules—

57. The Government may from time to time make rules [2] consistent with the provisions of this Act—

for custody of assets;

(*a*) for the safe custody of the assets and securities which come to the hands or possession of the Administrator General;

for remittance of money;

(*b*) for the remittance to the India Office of all sums of money payable or belonging to persons resident in Europe, or in other cases where such remittances are required;

for guidance of Administrator General.

(*c*) generally for the guidance of the Administrator General in the discharge of his duties;

and may by such rules amongst other things direct what books, account and statements, in addition to those mentioned in this Act, shall be kept by the Administrator General, and in what form the same shall be kept, and what entries the same shall contain, and where the same shall be kept, and where and how the assets and securities belonging to the estates to be administered by such Administrator General shall be kept and invested or deposited pending the administration thereof, and how and at what rate or rates of exchange any remittances thereof shall be made.

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[1] S. 56 was repealed by the Administrator General and Official Trustees Act, 1902 (V of 1902), s. 4 (1), General Acts, Vol. V.

Section 56 was as follows :—No person other than the Administrator General acting officially shall receive or retain any commission or agency charges for anything done as executor or administrator under any probate or letters of administration, or letters *ad colligenda bonâ*, which have been granted by the Supreme Court or High Court at Fort William in Bengal since the passing of Act No. VII of 1849 (*for the appointment of an Administrator General in Bengal*), or by either of the Supreme or High Courts at Madras and Bombay since the passing of Act No. II of 1850 (*to amend and extend to Madras and Bombay Act No. VII of 1849*), or which have been or shall be granted by any Court of competent jurisdiction within the meaning of sections 187 and 190 of the Indian Succession Act, 1865;

but this enactment shall not prevent any executor or other person from having the benefit of any legacy bequeathed to him in his character of executor, or by way of commission or otherwise.

[2] For rules under this section made—

(*a*) for the Presidency of Bengal, *see* Calcutta Gazette, 1856, p. 544. These rules are kept in force by the proviso to this section;

(*b*) by the Government of Bombay, *see* Bom. R. & O., and Bombay Government Gazette, 1907, Pt. I, p. 1406;

(*c*) by the Government of Madras, see notifications quoted in the Mad. R. & O., and Fort St. George Gazette, 1898, Pt. I, p. 702, *ibid*, 1899, Pt. I, p. 917.

Unless any such rules are made and published, the rules now in force in each of the said Presidencies, so far as the same are not inconsistent with this Act, shall be of the same force and effect as if the same had been made and published hereunder.

Proviso as to rules now in force.

58. Such rules shall be published in the Gazette of India, the Fort St. George Gazette, or the Bombay Government Gazette, as the case may be, and the several Administrators General shall obey and fulfil the same, and the same shall be a full authority and indemnity for all persons acting in pursuance thereof.

Publication of new rules.

59. The Governor General in Council may from time to time, either by general rule, or by special order in a particular case, decide any question as to the time at which any commission accruing to the Administrator General in his official capacity shall be deemed to have been payable; and such decision shall bind every Administrator General and the estates held by him in his official capacity.

Power to decide when commission shall be deemed payable.

60. Any order made under this Act by any Court shall have the same effect and be executed in the same manner as a decree.

Orders of Court to be equivalent to decrees.

[1] **60A.** The Administrator General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath or affirmation (which he is hereby authorized to administer or take) any person who is willing to be so examined by him regarding such question.

Power to examine on oath.

61. Whoever, having been sworn or having taken an affirmation under this Act, makes upon any examination authorized by this Act a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

False evidence.

62. All assets in the official charge of the Administrator General of any of the said Presidencies, and appearing from the official books and accounts of the Ecclesiastical Registrar and of the Administrator General of any of those Presidencies, or from the official books and accounts of any of those officers, to have been in official custody for a period of fifteen years or upwards without any claim thereto having been made and allowed, shall be transferred and paid to the Comptroller General of Accounts or to the Accountant General to the Government of Fort St. George or Bombay, as the case may be, and be carried to the account and credit of the Government of India for the general purposes of Government;

Assets unclaimed for fifteen years to be transferred to Government.

and the receipt of the said Comptroller General or Accountant General, as the case may be, shall be a full indemnity and discharge to the said Administrator General for any such transfer or payment:

[1] S. 60A was inserted by the Administrator General's Act, 1881 (IX of 1881), s. 3, General Acts, Vol. III.

Proviso.

Provided that this Act shall not authorize the transfer or payment of any such proceeds as aforesaid, pending any suit heretofore or hereafter instituted in respect thereof.

Mode of proceeding by claimant to recover principal money so transferred.

63. If any claim be hereafter made to any part of the securities, moneys or proceeds carried to the account and credit of the Government of India under the provisions of this Act, and if such claim be established to the satisfaction of the Comptroller General or the Accountant General to the Government of Fort St. George or Bombay, as the case may be, the Government of India shall pay to the claimant the amount of the principal so carried to its account and credit or so much thereof as appears to be due to the claimant.

If the claim be not established to the satisfaction of the said Comptroller General or Accountant General, as the case may be, the claimant may apply by petition to the High Court at the Presidency-town against the Secretary of State for India, and, after taking evidence either orally or on affidavit in a summary way as the Court thinks fit, the Court shall make such order on the petition for the payment of such portion of the said principal sum as justice requires, and such order shall be binding on all parties to the suit,

and the Court may direct by whom the whole or any part of the costs of each party shall be paid.

District Judge in certain cases to take charge of property of deceased persons, and to report to Administrator General.

64. Whenever any person, other than a [1][Native Christian], Hindú Muhammadan, [2][Parsí] or Buddhist or a person exempted under the Indian Succession Act, 1865,[3] section 332, from the operation of that Act, dies leaving assets within the limits of the jurisdiction of a District Judge, the District Judge shall report the circumstance without delay to the Administrator General of the Presidency, stating the following particulars so far as they may be known to him:— X of 1865.

(*a*) the amount and nature of the assets,

(*b*) whether or not the deceased left a will, and, if so, in whose custody it is,

and, on the lapse of one month from the date of the death,

(*c*) whether or not any one has applied for probate of the will of the deceased or letters of administration to his effects.

The District Judge shall retain the property under his charge, or appoint an officer under the provisions of the Indian Succession Act, 1865,[3] section 239, to take and keep possession of the same until the Administrator General has obtained letters of administration, or until X of 1865.

[1] Inserted by the Native Christian Administration of Estates Act, 1901 (VII of 1901), s. 4 : not, however, affecting any probate, letters of administration or certificate granted or vested under this Act; General Acts, Vol. V.

[2] The word "Parsí" in s. 64 was inserted by the Administrator General's Act, 1881 (IX of 1881), s. 2, General Acts, Vol. III.

[3] General Acts, Vol. I.

some other person has obtained such letters or a certificate from the Administrator General under the provisions of this Act, when the property shall be delivered over to the person obtaining such letters of administration or certificate, or, in the event of a will being discovered, to the person who may obtain probate of the will.

[1] [The District Judge may cause to be paid out of any property of which he or such officer has charge, or out of the proceeds of such property or of any part thereof, such sums as may appear to him to be necessary for all or any of the following purposes, namely:—

(*a*) the payment of the expenses of the funeral of the deceased and of obtaining probate of his will or letters of administration to his estate and effects,

(*b*) the payment of wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant, and

(*c*) the relief of the immediate necessities of the family of the deceased,

and nothing in section 279, section 280 or section 281 of the Indian X of 1865. Succession Act, 1865,[2] or in any other law for the time being in force with respect to rights of priority of creditors of deceased persons, shall be held to affect the validity of any payment so caused to be made.]

Act not to require administration of estates of soldiers, unless Administrator General authorized by Military Secretary or Committee of Adjustment.

65. Nothing in this Act is intended to require the Administrator General to take proceedings to obtain letters of administration to the estate or effects of any officer or soldier or other person subject to any Articles of War, unless when the Administrator General is duly authorized or required so to do by the Military Secretary to Government, or by a Committee of Adjustment or other officers or persons acting under any law for the time being in force relating to the payment of regimental debts;

nor is anything in this Act contained intended to interfere with or alter the provisions of any Act of Parliament for regulating the payment of regimental debts and the distribution of the effects of officers and soldiers dying in the service of Her Majesty in India, or of any Articles of War.

Succession Act and Companies Act not to affect Administrator General.

X of 1865. X of 1866. **66.** Nothing contained in the Indian Succession Act, 1865,[2] or the Indian Companies Act, 1866,[3] shall be taken to supersede or affect the rights, duties and privileges of the Administrators General and Officiating Administrators General of Bengal, Madras and Bombay respectively.

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[1] This paragraph was added to s. 64 by the Indian Succession Law Amendment Act, 1890 (II of 1890), s. 13, General Acts, Vol. IV.

[2] General Acts, Vol. I.

[3] *See* now Act VI of 1882, General Acts, Vol. III.

Saving of provision of Presidency Police Acts as to petty estates.

And nothing contained in the Indian Succession Act, 1865,[1] or in this Act, or in the said Act No. XXIV of 1867,[2] shall be deemed to affect, or to have affected, any provisions[3] for the time being in force relating to the moveable property under two hundred rupees in value of persons dying intestate within any of the presidency-towns, which shall be or has been taken charge of by the police for the purpose of safe custody. X of 1865.

Compliance with requisitions for returns.

[4] **67.** The Administrator General shall comply with such requisitions as may be made by the Government for returns and statements, in such form and manner as the Government may deem proper.

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[5] PART VII.

DIVISION OF THE PRESIDENCY OF BENGAL INTO PROVINCES.

Division of the Presidency of Bengal into provinces.

68. (*1*) Notwithstanding anything in the foregoing provisions of this Act, the Governor General in Council, upon the occurrence of any vacancy in the office of the Administrator General of Bengal, may, by notification in the Gazette of India,—

(*a*) divide the Presidency of Bengal, as defined in this Act, into so many Provinces as he thinks fit,

(*b*) define the limits of each of those Provinces, and

(*c*) appoint an Administrator General for each Province,

and, subject to the provisions of this section, the following consequences shall thereupon ensue, namely:—

(i) the office of Administrator General of Bengal shall cease to exist:

(ii) the Administrator General of a Province shall have the like rights and privileges, and perform the like duties, in the territories and dominions included in the Province, as the Administrator General of Bengal had and performed as Administrator General therein:

(iii) the functions of the Government under this Act shall, as regards the territories and dominions included in a Province, be discharged by the Governor General in Council:

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[1] General Acts, Vol. I.

[2] Act XXIV of 1867 is repealed by this Act, *see* s. 2, *supra*.

[3] *See* the Calcutta Police Act, 1866 (Bengal Act IV of 1866), ss. 100, 101, Ben. Code; the Madras City Police Act, 1888 (Madras Act III of 1888), s. 30, Mad. Code; and (as to Bombay) Act XIII of 1856, ss. 113, 114, Bom. Code.

[4] S. 67 was added by the Indian Succession Law Amendment Act, 1890 (II of 1890), s. 14, General Acts, Vol. IV.

[5] Part VII was added by the Indian Succession Law Amendment Act, 1890 (II of 1890), s. 15, *ibid.*

(*Part VII.—Division of the Presidency of Bengal into Provinces.*)

(iv) the functions of whatsoever kind assigned by the foregoing provisions of this Act to the High Court at Calcutta in respect of the territories and dominions included in a Province shall be discharged by such High Court as the Governor General in Council may, by notification in the Gazette of India, appoint in this behalf, and probate or letters of administration granted to the Administrator General of the Province by the High Court so appointed shall have the same effect throughout the Presidency of Bengal, as defined in this Act, or, if the Court so directs, throughout British India, as, but for the abolition of the office of Administrator General of Bengal, probate or letters of administration granted to the holder of that office by the High Court at Calcutta would have had:

(v) in the foregoing provisions of this Act the word "Presidency" shall be deemed to include a Province, the expression "Presidency-town" the place of sitting of a High Court appointed by the Governor General in Council under clause (iv) of this sub-section, and the expression "Advocate General" a Government Advocate or other officer appointed by the Governor General in Council to discharge for a Province the functions under this Act of an Advocate General for a Presidency:

(vi) the provisions of this Act with respect to the commission of the Administrator General of Bengal shall regulate the commission payable to the Administrator General of a Province: and,

(vii) generally, the provisions of the foregoing sections of this Act with respect to the High Court at Calcutta, and the provisions of those sections or of any other enactment with respect to the Administrator General of Bengal, shall, in relation to a Province, be construed, so far as may be, to apply to the High Court and Administrator General, respectively, appointed for the Province under this section.

(*2*) Any proceeding which was commenced before the publication of the notification dividing the Presidency of Bengal into Provinces, and to or in which the Administrator General of Bengal in his representative character was a party or was otherwise concerned, shall be continued as if the notification had not been published, and the Administrator General of the Province in which the Town of Calcutta is comprised shall for the purposes of the proceeding be deemed to be the successor in office of the Administrator General of Bengal.

(*3*) [1] * * * * * * * *.

[1] Sub-section (3) was repealed by the Lower Burma Courts Act, 1900 (VI of 1900), s. 48 and Sch. II.

(*4*) Notwithstanding any division of the Presidency of Bengal, as defined in this Act, into provinces under this section, the Administrator General of the Province in which the Town of Calcutta is comprised shall be deemed to be the Administrator General for the whole of the said Presidency for the purposes of the Regimental Debts Act, 1863.[1] 26 & 27 Vict., c. 57.

ACT No. III OF 1874.[2]

[*24th February 1874.*]

An Act to explain and amend the law relating to certain married women, and for other purposes.

Preamble. WHEREAS it is expedient to make such provision as hereinafter appears for the enjoyment of wages and earnings by women married before the first day of January, 1866, and for insurances on lives by persons married before or after that day:

And whereas by the Indian Succession Act, 1865,[3] section 4, it is enacted that no person shall by marriage acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done, if unmarried: X of 1865.

And whereas by force of the said Act all women to whose marriages it applies are absolute owners of all property vested in, or acquired by, them, and their husbands do not by their marriage acquire any interest in such property, but the said Act does not protect such husbands from

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[1] Coll. Stat., Vol. II, Ed. 1881, p. 770.

[2] For the Statement of Objects and Reasons, *see* Gazette of India, 1873, Pt. V, p. 457; for Proceedings in Council, *see ibid*, Extra Supplements, dated 2nd August and 6th September, 1873, respectively, pp. 9 and 12, and *ibid*, 1874, Supplement, p. 239.

The Act has been declared in force in—

the Arakan Hill District, *see* the Arakan Hill District Laws Regulation, 1874 (IX of 1874), s. 3, Bur. Code.

the Santhál Parganas, *see* the Santhál Parganas Settlement Regulation (III of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (III of 1899), Ben. Code;

Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (1) and Sch. I.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, *infra*, to be in force in the following Scheduled Districts, namely :—

the Districts of Hazáribagh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singhbhum, *see* Gazette of India, 1881, Pt. I, p. 504. The District of Lohárdaga included at this time the Palamau District, which was separated in 1894; Lohardaga is now called the Ranchi District; Calcutta Gazette, 1899, Pt. 1, p. 44.

It has been extended, by notification under s. 5 of the same Act, to the Scheduled District of the North-Western Provinces Tarái, *see* Gazette of India, 1876, Pt. I, p. 505.

[3] General Acts, Vol. I.

liabilities on account of the debts of their wives contracted before marriage, and does not expressly provide for the enforcement of claims by or against such wives:

It is hereby enacted as follows:—

I.—Preliminary.

Short title. **1.** This Act may be called the Married Women's Property Act, 1874.

Extent and application. **2.** It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty.

But nothing herein contained applies to any married woman who at the time of her marriage professed the Hindú, Muhammadan, Buddhist, Sikh or Jaina religion, or whose husband, at the time of such marriage, professed any of those religions.

And the Governor General in Council may from time to time, by order, either retrospectively from the passing of this Act or prospectively, exempt from the operation of all or any of the provisions of this Act the members of any race, sect or tribe, or part of a race, sect or tribe, to whom he may consider it impossible or inexpedient to apply such provisions.

The Governor General in Council may also revoke any such order, but not so that the revocation shall have any retrospective effect.

All orders and revocations under this section shall be published in the Gazette of India.

X of 1865. The fourth section of the said Indian Succession Act[1] shall not apply, and shall be deemed never to have applied, to any marriage one or both of the parties to which professed at the time of the marriage the Hindú, Muhammadan, Buddhist, Sikh or Jaina religion.

3. [*Commencement.*] *Rep. by the Repealing Act, 1876 (XII of 1876).*

II.—Married Women's Wages and Earnings.

Married women's earnings to be their separate property. [2]**4.** The wages and earnings of any married woman acquired or gained by her after the passing of this Act, in any employment, occupation or trade carried on by her and not by her husband,

and also any money or other property so acquired by her through the exercise of any literary, artistic or scientific skill,

and all savings from and investments of such wages, earnings and property,

shall be deemed to be her separate property, and her receipts alone shall be good discharges for such wages, earnings and property.

[1] General Acts, Vol. I.

[2] *Cf.* the married Women's Property Act, 1870 (33 & 34 Vict., c. 93), s. 1, now repealed by the Married Women's Property Act, 1882 (45 & 46 Vict., c. 75).

III.—Insurances by Wives and Husbands.

Married woman may effect policy of insurance.

[1] **5.** Any married woman may effect a policy of insurance on her own behalf and independently of her husband; and the same and all benefit thereof, if expressed on the face of it to be so effected, shall enure as her separate property, and the contract evidenced by such policy shall be as valid as if made with an unmarried woman.

Insurance by husband for benefit of wife.

[2] **6.** A policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall enure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate.

When the sum secured by the policy becomes payable, it shall, unless special trustees are duly appointed to receive and hold the same, be paid to the Official Trustee of the Presidency in which the office at which the insurance was effected is situate, and shall be received and held by him upon the trusts expressed in the policy, or such of them as are then existing.

And in reference to such sum he shall stand in the same position in all respects as if he had been duly appointed trustee thereof by a High Court, under Act No. XVII of 1864 [3] (*to constitute an Office of Official Trustee*), section 10.

Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud creditors.

IV.—Legal Proceedings by and against Married Women.

Married women may take legal proceedings.

[4] **7.** A married woman may maintain a suit in her own name for the recovery of property of any description which by force of the said Indian Succession Act, 1865,[3] or of this Act, is her separate property; and she shall have, in her own name, the same remedies, both civil and criminal, against all persons, for the protection and security of such property, as if she were unmarried, and she shall be liable to such suits, processes and orders in respect of such property as she would be liable to if she were unmarried.

X of 1865.

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[1] *Cf.* the Married Women's Property Act, 1870 (33 & 34 Vict., c. 93), s. 10, para. 1.
[2] *Cf.* the Married Women's Property Act, 1870 (33 & 34 Vict., c. 93), s. 10, para. 2.
[3] General Acts, Vol. I.
[4] *Cf.* the Married Women's Property Act, 1870 (33 & 34 Vict., c. 93), s. 11, now repealed by the Married Women's Property Act, 1882 (45 & 46 Vict., c. 75).

8. If a married woman (whether married before or after the first day of January, 1866) possesses separate property, and if any person enters into a contract with her with reference to such property, or on the faith that her obligation arising out of such contract will be satisfied out of her separate property, such person shall be entitle to sue her, and, to the extent of her separate property, to recover against her whatever he might have recovered in such suit had she been unmarried at the date of the contract and continued unmarried at the execution of the decree: Wife's liability for postnuptial debts.

Provided that nothing herein contained shall affect the liability of a husband for debts contracted by his wife's agency, express or implied * * * [1]

V.—Husband's liability for Wife's debts.

[2] **9.** A husband married after the thirty-first day of December, 1865, shall not by reason only of such marriage be liable to the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and shall, to the extent of her separate property, be liable to satisfy such debts as if she had continued unmarried: Husband not liable for wife's antenuptial debts.

Provided that nothing contained in this section shall * * * * [3] invalidate any contract into which a husband may, before the passing of this Act, have entered in consideration of his wife's antenuptial debts. Proviso.

ACT No. IV OF 1874.[4]

[*24th February 1874.*]

An Act to control recruiting in British India for the service of Foreign States.

WHEREAS it is expedient that the Governor General in Council Preamble.

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[1] The words "or render a married woman liable to arrest or to imprisonment in execution of a decree," were repealed by the Debtors Act, 1888 (VI of 1888), s. 9.

[2] *Cf.* the Married Women's Property Act, 1870 (33 & 34 Vict., c. 93), s. 12.

[3] The words "affect any suit instituted before the passing of this Act, nor" were repealed by the Repealing and Amending Act, 1891 (XII of 1891).

[4] For the Statement of Objects and Reasons, *see* Gazette of India, 1874, Pt. V, p. 1; for Proceedings in Council, *see ibid*, 1873, Supplement, p. 1300; *ibid*, 1874, Supplement, pp. 12 and 240.

This Act has been declared in force in—

Upper Burma generally (except the Shan States), by s. 4 (1) and Sch. I of the Burma Laws Act, 1898 (XIII of 1898), Bur. Code;

the Arakan Hill District, *see* s. 3 and Schedule to the Arakan Hill District Laws Regulation, 1874, *ibid*.

should exercise full control over recruiting in British India for the service of Foreign States; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Foreign Recruiting Act, 1874.

Local extent.

It extends to the whole of British India.

[*Commencement.*] *Rep. by the Repealing Act, 1876 (XII of 1876).*

"Foreign State" defined.

2. In this Act—

"Foreign State" includes any person or persons exercising or assuming to exercise the powers of Government in or over any country, colony, province or people beyond the limits of British India.

Power to prohibit or permit recruiting.

3. If any person is, within the limits of British India, obtaining or attempting to obtain recruits for the service of any Foreign State in any capacity, the Governor General in Council may, by order in writing signed by a Secretary to the Government of India, either prohibit such person from so doing, or permit him to do so subject to any conditions which the Governor General in Council thinks fit to impose.

Power to impose conditions.

4. The Governor General in Council may from time to time, by general order notified in the Gazette of India, either prohibit recruiting for the service of any Foreign State, or impose upon such recruiting any conditions which he thinks fit.

Power to rescind or vary orders.

5. The Governor General in Council may rescind or vary any order made under this Act in such manner as he thinks fit.

Offences.

6. Whoever, in violation of the prohibition of the Governor General in Council, or of any condition subject to which permission to recruit may have been accorded,—

(*a*) induces or attempts to induce any person to accept or agree to accept or to proceed to any place with a view to obtaining any commission or employment in the service of any Foreign State, or

(*b*) knowingly aids in the engagement of any person so induced, by forwarding or conveying him or by advancing money or in any other way whatever,

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British Baluchistan and the Agency Territories, *see* the Baluchistan Laws Regulation, 1890 (I of 1890), s. 3, Bal. Code, and the Baluchistan Agency Laws Law, 1890, *ibid.*

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, *infra*, to be in force in the following Scheduled Districts, namely :—

the Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum, *see* Gazette of India, 1881, Pt. I, p. 504. The District of Lohárdaga included at this time the Palamau District, which was separated in 1894; Lohardaga is now called the Ranchi District, Calcutta Gazette, 1899, Pt. I, p. 44.

It has been extended, by notification under s. 5 of the same Act, to the Scheduled District of the North-Western Provinces Tarái, *see* Gazette of India, 1876, Pt. I, p. 505.

The Foreign Enlistment Act, 1870 (33 & 34 Vict., c. 90), applies only when the recruiting is for the service of any foreign State *at war* with any foreign State at peace with Her Majesty.

shall be liable to imprisonment for a term which may extend to seven years, or to fine to such amount as the Court thinks fit, or to both.

7. Any offence against this Act may be enquired into and tried, as well in any district in which the person accused may be found, as in any district in which it might be enquired into and tried under the provisions of the Code of Criminal Procedure.[1] Place of trial.

THE EUROPEAN VAGRANCY ACT, 1874.

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[1] *See* now the Code of Criminal Procedure, 1898 (Act V of 1898), General Acts, Vol. V.

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ACT No. IX OF 1874.[1]

[*7th April 1874.*]

An Act to consolidate and amend the Law relating to European Vagrancy.

WHEREAS it is expedient to consolidate and amend the laws relating Preamble

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[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1873, Pt. V, p. 399; for Proceedings in Council, *see ibid*, 1874, Extra Supplement, August 23rd, pp. 10 and 14; *ibid*, 1874, Supplement, pp. 323 and 412.

This Act has been declared in force in—

Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (1) and Sch. I, Bur. Code;

Angul and the Khondmals by the Angul District Regulation, 1894 (I of 1894), s. 3, Ben. Code;

British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890), Bal. Code;

the Arakan Hill District by the Arakan Hill District Laws Regulation, 1874 (IX of 1874), s. 3, Bur. Code.

It has been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872) as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (III of 1899), Ben. Code.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, *infra*, to be in force in the following Scheduled Districts, namely :—

the Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum, *see* Gazette of India, 1881, Pt. I, p. 504. The Lohárdaga District at this time included the Palamau District; Lohardaga is now called the Ranchi District, Calcutta Gazette, 1899, Pt. I, p. 44.

to persons of European extraction who wander in a destitute condition throughout India; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be called the European Vagrancy Act, 1874.

Local extent.

It extends to the whole of British India and to the dominions of Princes and States in India in alliance with Her Majesty;

Commencement.

And it shall come into force at once: Provided that sections 4 to 16 (both inclusive), 19, 20, 24 and 29,[1] shall not come into force in Coorg, or in the Andaman and Nicobar Islands, or in any of the dominions of the Princes and States in India in alliance with Her Majesty not situate within the limits of any Presidency, Lieutenant-Governorship or Chief Commissionership in British India, until such day or respective days as the Governor General in Council from time to time, by notification in the Gazette of India, appoints in this behalf.

Repeal of Acts.

2. Acts No. XXI of 1869 (*to provide against European Vagrancy*) and No. XXVIII of 1871 (*to amend the European Vagrancy Act, 1869,*) are hereby repealed.

But all appointments and orders made, workhouses provided, certificates given, powers conferred, rules prescribed and exemptions granted under the former Act shall be deemed to have been respectively made, provided, given, conferred, prescribed and granted under this Act.

Interpretation-clause. "Person of European extraction."

3. In this Act—

[2]"person of European extraction" includes—

(*a*) persons born in Europe, America, the West Indies, Australia, Tasmania, New Zealand, Natal or the Cape Colony;

(*b*) the sons and grandsons of such persons;

but does not include persons commonly called Eurasians or East Indians:

It has been extended, by notification under s. 5 of the same Act, to the Scheduled District of the North-Western Provinces Tarái, *see* Gazette of India, 1876, Pt. I, p. 505; and to Ganjam and Vizagapatam, *see* Fort St. George Gazette, 1899, Pt. I, p. 1140.

[1] These sections have been extended to the Native States within the limits of—
(1) The Madras Presidency, *see* Gazette of India, 1870, Pt. I, p. 723;
(2) The Lower Provinces of Bengal, *see* Gazette of India, 1870, Pt. I, p. 723;
(3) The Central India Agency, *see* Gazette of India, 1891, Pt. I, p. 552;
(4) The Punjab, *see* Gazette of India, 1872, Pt. I, p. 188; and
(5) they have also been extended to the Hyderabad State, *see* Gazette of India, 1890, Pt. I, p. 527.

[2] *Cf.* definition of "European British subject" in the Code of Criminal Procedure, 1898 (Act V of 1898), s. 4 (1) (i), General Acts, Vol. V.

"vagrant" means a person of European extraction found asking for alms, or wandering about without any employment or visible means of subsistence: "Vagrant."

"master of a ship" includes any person in charge of a decked vessel: "Master of a ship."

and in Parts III and V of this Act "Magistrate" means, within the limits of the towns of Calcutta, Madras and Bombay, a Magistrate of Police [1] and, outside those limits, a person exercising powers under the Code of Criminal Procedure [2] not less than those of a Magistrate of the second class. "Magistrate."

PART II.

PROCEDURE.

4. Any police-officer may, within the limits of the towns of Calcutta, Madras and Bombay, require any person who is apparently a vagrant to accompany him or any other police-officer to, and to appear before, the nearest Magistrate of Police [1] and may, without those limits, require any such person to accompany him or any other police-officer to, and to appear before, the nearest Justice of the Peace exercising the powers of a Magistrate of the first class under the Code of Criminal Procedure.[2] Power to require apparent vagrant to go before Magistrate.

5. The Magistrate of Police [1] or Justice shall in such case, or in any other case where a person apparently a vagrant comes before him, make a summary inquiry into the circumstances and character of the apparent vagrant; and if he is satisfied that such person is a vagrant, he shall record in his office a declaration to that effect. Summary inquiry into vagrant's circumstances. Declaration of vagrancy.

If he is further of opinion that the vagrant is not likely to obtain employment at once, or if he has reason to believe that a declaration of vagrancy has on any former occasion been recorded in respect of such vagrant, he shall require the vagrant to go to a Government workhouse, and shall draw up an order to that effect. Order to go to workhouse.

The vagrant shall then be placed in charge of the police for the purpose of being forwarded to the workhouse, and the said order shall be a sufficient authority to the police for retaining him in their charge while he is on his way to the workhouse, and to the Governor of the workhouse for receiving and detaining such vagrant.

6. Where the officer making the inquiry mentioned in section 5 is of opinion that the vagrant is likely to obtain employment in any place subject to the Local Government, or (when the vagrant is in any part of the dominions mentioned in section 1) in any place subject to any Forwarding vagrant to place of employment.

[1] Read now "Presidency Magistrate," *see* Act V of 1898, s. 3, General Acts, Vol. V.
[2] *See* now the Code of Criminal Procedure, 1898 (Act V of 1898), *ibid.*

adjacent Local Government, such officer may in his discretion forward the vagrant to such place in charge of the police, and draw up an order to that effect.

Such order shall be a sufficient authority to the police for retaining the vagrant in their charge while he is on his way to such place of employment.

Assistance to obtain employment.

7. Upon his arrival at the place of employment, the vagrant shall be taken before the nearest Magistrate of Police [1] or Justice of the Peace exercising powers as aforesaid, to whom the order for transmission shall be delivered.

Such officer shall thereupon to the best of his ability, assist the vagrant in seeking employment, and may in the meantime, if he think fit, keep the vagrant in the charge of the police.

Should the vagrant fail to obtain suitable employment within a reasonable time not exceeding fifteen days from such arrival, such officer shall forward him to a Government workhouse in the manner provided by section 5.

Subsistence allowance.

8. Every person while in charge of the police, whether before inquiry as to his vagrancy, or while he is on his way, under section 5, to the workhouse, or under section 6, to a place of employment, shall be entitled to an allowance for his subsistence at the rate of eight annas per diem.

The Magistrate of Police [1] or Justice, before whom any vagrant is taken under section 7, may, if he think fit, order the vagrant to receive a similar allowance while he is seeking employment.

The Local Government shall cause such allowance to be paid out of such funds at its disposal and in such manner as it may from time to time direct.

Power to give certificates.

9. Any Magistrate of Police [1] or Justice of the Peace exercising powers as aforesaid may, on being satisfied that any person of European extraction is not likely to become a vagrant, give such person a certificate under his hand stating that for a certain time (mentioning it) not exceeding six months from the date of the certificate, and within certain limits (mentioning them), nothing in sections 4, 5, 6 and 7 shall apply to the holder of such certificate; and thereupon, so long as the certificate remains in force, nothing in sections 4, 5, 6 and 7 shall apply to such person within such limits as aforesaid.

Form of certificate.

Every such certificate shall be in the form set forth in the first schedule to this Act annexed, or as near thereto as circumstances will admit.

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[1] Read now "Presidency Magistrate," *see* the Code of Criminal Procedure, 1898 (Act V of 1898), s. 3, General Acts, Vol. V.

Power to invest certain officials with jurisdiction of Justices under sections 5, 7, 8 and 9.

10. The Local Government may from time to time, by notification in the official Gazette,[1] invest any Justice of the Peace, District Superintendent of Police or Assistant District Superintendent of Police with the jurisdiction and powers conferred by this Part on a Justice of the Peace exercising powers as aforesaid.

PART III.

Government Workhouses.

Provision of Government workhouse.

[2] **11.** The Local Government, with the previous sanction of the Governor General in Council, may provide workhouses with their necessary furniture and establishment, at such places as it may think proper, for the temporary reception of vagrants,

or may, by writing under the hand of a Secretary to such Government, certify any building, or part of a building not provided as a workhouse under the former part of this section, to be fit for a workhouse for the purposes of this Act. Every such certificate shall be published in the local official Gazette, and thereupon such building or part of a building shall, until the Local Government otherwise orders, be deemed a Government workhouse under this Act.

Scale of diet.

The Local Government shall allow the same scale of diet for the support of vagrants received in such workhouses as is for the time being allowed for Europeans confined in the local prisons or penitentiaries.

Superintendence of workhouses.

[3] **12.** Every such workhouse shall be under the immediate charge of a Governor, who shall be appointed, and may be suspended or removed, by the Local Government.

Every such Governor shall, if the Local Government think fit, be subject to the orders of a Committee of Management appointed from time to time by such Government, or, in the absence of a committee, to the orders of such officer as the Local Government from time to time appoints in this behalf.

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[1] For instance of such notification, *see* Mad. R. & O.

[2] For notifications issued under the powers conferred by this section in—
Madras . . . . . *see* Fort St. George Gazette, 1901, Pt. I, p. 9;
Bombay . . . . . *see* Bom. R. & O.;
Burma . . . . . *see* Bur. R. M.;
United Provinces . . . *see* N.-W. P. & Oudh List of Local Rules and Orders, Ed. 1894, p. 43;
Central Provinces . . . *see* C. P. R. & O.

[3] For notifications issued under the powers conferred by this section in—
Bombay . . . . . *see* Bom. R. & O.;
Burma . . . . . *see* Bur. R. M.;
Madras . . . . . *see* Mad. R. & O.;
Central Provinces . . . *see* Central Provinces Gazette, 1905, Pt. III, p. 121.

Search of vagrants.

13. Every such Governor may order that any vagrant admitted to the workhouse under his charge shall be searched, and that the vagrant's bundles, packages and other effects shall be inspected, and may direct that any money then found with or on the vagrant shall be applied (subject to the orders of the Local Government) towards the expense of carrying this Act into execution, and may order that all or any of the said effects shall be sold, and that the produce of the sale be applied as aforesaid, but subject to the like orders.

Discipline.

14. Vagrants admitted to workhouses under this Act shall be subject to such rules of management and discipline as may from time to time be prescribed by the Local Government with the previous sanction of the Governor General in Council.[1]

The Local Government may authorize [2] any Governor of a workhouse to punish (under or not under the supervision and direction of a Committee of Management, as the Local Government thinks fit) any vagrant who knowingly disobeys or neglects any such rule with any one of the following punishments (namely):—

(*a*) solitary confinement within the workhouse for any time not exceeding seven days;

(*b*) solitary confinement within the workhouse for any time not exceeding three days upon a diet reduced to such extent as the Local Government may prescribe;[3]

(*c*) hard labour for any time not exceeding seven days;

(*d*) reduction of diet to such extent as the Local Government may prescribe [3] for any time not exceeding five days;

or in lieu of any such punishment any such vagrant may, on conviction before a Magistrate of such disobedience or neglect, be punishable with rigorous imprisonment in jail for a term which may extend to three months.

Refusal to accept employment.

15. The Governor and the Committee of Management (if any) of every such workhouse shall use his and their best endeavours to obtain outside the workhouse suitable employment for the vagrants admitted thereto.

When such employment is obtained, any such vagrant refusing or neglecting to avail himself thereof shall, on conviction before a Magis-

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[1] For notifications prescribing such rules in—
Bombay . . . . . *see* Bom. R. & O.;
Madras . . . . . *see* Mad. R. & O.;
United Provinces . . . *see* N.-W. P. and Oudh List of Local Rules and Orders, Ed. 1894, p. 43.

[2] For notifications conferring such authority in—
Burma . . . . . *see* Bur. R. M.;
Madras . . . . . *see* Mad. R. & O.;

[3] For instance of such notification, *see* Bur. R. M.

trate, be punishable with rigorous imprisonment for a term which may extend to one month.

PART IV.

REMOVAL FROM INDIA.

Removal of vagrants.

16. If after the lapse of a reasonable time no suitable employment is obtainable for any such vagrant, the Local Government may either (when he has entered into such agreement as hereinafter mentioned) cause him to be removed from British India in manner hereinafter provided, the cost of such removal being paid by Government;

Cost of removal.

or it may cause sections 23 and 30 to be read to him and may then release him.

Agreement with vagrants.

17. Any vagrant or other person of European extraction may enter into an agreement [1] in writing with the Secretary of Sate for India in Council binding himself—

(*a*) to proceed to such port in British India as shall be mentioned in the agreement;

(*b*) there to embark on board such ship and at such time as is directed by an officer appointed in this behalf by the Local Government of the territories in which such port is situate, for the purpose of being removed from India at the expense of the said Secretary of State in Council;

(*c*) to remain on board such ship until she has arrived at her port of destination; and

(*d*) not to return to India until five years have elapsed from the date of such embarkation.

Form of agreement.

Every such agreement * * * [2] shall be in the form set forth in the second schedule to this Act annexed, or as near thereto as circumstances admit.

Power to perform agreement.

18. The Local Government of the territories in which the said port is situate may enter into such contracts for conveyance or otherwise and perform such other acts as may be necessary to carry out such agreement on the part of the said Secretary of State in Council.

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[1] For notification requiring that the Commissioner of Police and Justices of the Peace do obtain Government sanction before concluding an agreement with any vagrant, *see* Mad. R. & O.

[2] The words "may be on unstamped paper and" were repealed by the Indian Stamp Act, 1879 (I of 1879), which exempted these agreements from stamp-duty; *see* now, however, the Indian Stamp Act, 1899 (II of 1899), General Acts, Vol. V.

PART V.

PENALTIES.

Refusal to go before Magistrate.

19. Any person refusing or failing to accompany a police-officer to, or to appear before, a Magistrate of Police [1] or Justice of the Peace for the purpose of preliminary inquiry, when required so to do under section 4, may be arrested without warrant and shall be punishable, whether he be or not a European British subject, on conviction before a Magistrate, with imprisonment for a term which may extend to one month, or with fine, or with both.

Assaulting police.

And any person who, when required under section 4 to accompany a police-officer to, or to appear before, a Magistrate of Police [1] or Justice of the Peace, commits an offence punishable under section 353 of the Indian Penal Code,[2] may, whether he be or be not a European British subject, be tried by a Magistrate for such offence. XLV of 1860.

Escaping from police.

20. Any vagrant who escapes from the police while committed to their charge under the orders specified in sections 5 and 6,

Quitting workhouse without leave.

or, who leaves a workhouse, under this Act, without permission from the Governor,

Failing to return to workhouse.

or who having with such permission left a workhouse for a limited time or a specified purpose, fails to return on the expiration of such time or when such purpose has been accomplished or proves to be impracticable,

shall for every such offence be punishable, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years.

Failing to proceed to port of embarkation.

21. Any person entering into an agreement under section 17, and failing to proceed in pursuance thereof to the port therein mentioned,

Refusing to go on board ship.

or refusing to embark when directed so to do under the same section,

Escaping from ship.

or escaping from the ship in which he has so embarked before she has reached her port of destination,

shall for every such offence be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to six months.

Returning to India.

22. Any person returning to India within five years of the date of his embarkation pursuant to any agreement entered into under section

[1] Read now "Presidency Magistrate," *see* the Code of Criminal Procedure, 1898 (Act V of 1898), s. 3, General Acts, Vol. V.

[2] General Acts, Vol. I.

17, unless specially permitted so to do by the Secretary of State for India, shall for every such offence be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years.

Begging.

23. Any person of European extraction found asking for alms when he has sufficient means of subsistence,

or asking for alms in a threatening or insolent manner,

or continuing to ask for alms of any person after he has been required to desist,

shall be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term not exceeding one month for the first offence, two months for the second, and three months for any subsequent offence.

Procedure on close imprisonment.

24. Every person imprisoned under section 19, 20, 21, 22 or 23 shall, at the end of his term of imprisonment, be placed before the nearest Magistrate of Police [1] or Justice of the Peace exercising powers as aforesaid, who shall, if he think fit, forthwith deal with him in the manner prescribed by sections 5 and 6.

The order of transmission shall certify the fact of the previous conviction.

Penalty on shipmaster bringing European convicts to India.

25. Every master of a ship landing or allowing to land in any part of British India any person of European extraction who has been convicted in any other part of Her Majesty's dominions of felony, or of an offence which, if committed in England, would be felony, shall, on conviction before a Magistrate, be liable, for every such person so landed or allowed to land, to pay a fine not exceeding five hundred rupees and not less than one hundred rupees, and, in default of payment, to imprisonment for any term not exceeding two months,

unless the defendant satisfy the Magistrate by evidence (which the defendant is hereby declared competent to give) that he had made due enquiry as to the person so landed, or allowed to land, and that he had no reason to believe that such person had been convicted as aforesaid.

Power to exempt certain shipmasters.

The Governor General in Council may from time to time, by notification in the Gazette of India, exempt [2] from the operation of the former part of this section the masters of any class of ships, on such terms as to the Governor General in Council seem fit, and either in respect of all or of any of the persons on board such ships.

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[1] Read now "Presidency Magistrate," *see* the Code of Criminal Procedure, 1898 (Act V of 1898), s. 3, General Acts, Vol. V.

[2] For notification issued under the powers conferred by s. 25 of Act XXI of 1869, which is kept in force by s. 2 of this Act, *see* Gazette of India, 1870, Pt. I, p. 723.

The Governor General in Council may in like manner revoke any exemption made under this section.

Recovery of fines.

26. All fines imposed under this Act may be recovered, [1][in the manner provided by the law for the time being in force for the recovery of fines imposed by Criminal Courts.]

Payment of fines.

All fines recovered under this Act shall be paid to the credit of the Government of India, or as the Governor General in Council from time to time directs.

Prosecutions.

27. All prosecutions under this Act may be instituted and conducted by such officer as the Local Government from time to time appoints in this behalf.[3]

Limits of jurisdiction.

28. In imposing penalties under this Part and Part III of this Act, no person shall exceed the limits of jurisdiction prescribed by him by the Code of Criminal Procedure [2] in the case of offenders not being European British subjects.

Validity of proceedings where Magistrate is not the nearest.

29. No proceeding under this Act shall be deemed invalid by reason only that the Magistrate of Police [4] or Justice, before whom a person, apparently a vagrant, was required to appear, or before whom a person was placed under section 24 was not the nearest.

PART VI.

MISCELLANEOUS.

Deprivation of privileges of European British subjects under Criminal Procedure Code.

30. Any European British subject who, upon the summary enquiry mentioned in section 5, has been determined to be a vagrant, or who has been convicted under section 22 or section 23, shall, so long as he remains in India, be subject, beyond the limits of the said towns, to the provisions of the Code of Criminal Procedure [2] (other than those

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[1] These words were substituted for the words " if for offences committed outside the local limits of the towns of Calcutta, Madras and Bombay, in the manner prescribed by the Code of Criminal Procedure and if for offences committed within those limits in the manner prescribed by any Act regulating the police of such towns in force for the time being " by the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol. IV.

[2] *See* now Act V of 1898, General Acts, Vol. V.

[3] For notifications issued under the powers conferred by this section in—

(1) Bombay . . . . *see* Bom. R. & O.;
(2) Burma . . . . *see* Bur. R. M.;
(3) Madras . . . . *see* Mad. R. & O.
(4) Central Provinces . . *see* Central Provinces Gazette, 1905, Pt. III, p. 121.

[4] Read now " Presidency Magistrate," *see* the Code of Criminal Procedure, 1898 (Act V of 1898), s. 3 (*2*), General Acts, Vol. V.

contained in Chapter XXXVIII [1] of the same Code) applicable to a European not being a British subject.

If from any cause he is committed or held to bail by a Justice of the Peace to take his trial before a High Court, he shall not be at liberty to object to the jurisdiction of such Justice of the Peace or High Court on the ground of anything contained in the former part of this section.

Save as aforesaid nothing herein contained shall be deemed to confer jurisdiction over European British subjects on Magistrates who, if this Act had not been passed, would have had no such jurisdiction.

Liability of importers of Europeans or employers of soldiers becoming vagrants.

31. Whenever any person of European extraction lands in India, or being a non-commissioned officer or soldier in Her Majesty's Army leaves that Army in India, under an engagement to serve any other person, or any Company, Association or body of persons in any capacity,

and whenever a sailor of European extraction not being a British subject is discharged from his ship in any British Indian port,

and becomes chargeable to the State as a vagrant within one year after his arrival in India or leaving the Army, or discharge from his ship, as the case may be, then the person, or Company, Association or body, to serve whom he has so landed in India or left the Army, or, in the case of a sailor, the person who is at the date of the discharge the owner or agent of the ship from which the sailor has been so discharged, shall be liable to pay to the Government the cost of his removal under this Act, and all other charges incurred by the State in consequence of his becoming a vagrant.

Recovery of charges.

Such costs and charges shall be recoverable by suit as if an express agreement to repay them had been entered into with the Secretary of State for India in Council, by the person, Company, Association, body, owner or agent chargeable.

Liability of consignee in case of Europeans who arrive in charge of animals and become vagrants.

32. When any person of European extraction lands in India, being or having been during his passage to India, or from one Indian port to another, in charge of, or in attendance upon, any animal, and becomes chargeable to the State as a vagrant within one year after his arrival in India, then

the consignee of such animal,

or the agents in India for the sale of such animal,

or, if such consignee or agents cannot be found, the agent to whom the ship in which such animal arrived in India was consigned,

shall be liable to pay the Government the cost of such person's re-

[1] *See* now Chapter VIII of the Code of Criminal Procedure, 1898 (Act V of 1898), General Acts, Vol. V.

moval under this Act, and all other charges incurred by the State in consequence of his becoming a vagrant.

Any such consignee or agent shall be entitled to charge the consignor or principal for any payment to the Government under this section.

"Consignee" defined.

For the purposes of this section "consignee" includes any person who undertakes to dispose of such animal for the benefit of the consignor, and

"Agent" defined.

"agent" includes any person who undertakes the agency of such ship, though it may not have been consigned to him.

Evidence of declaration under section 5.

33. In any proceeding under this Part, a certified copy of the declaration recorded under section 5 shall be *primâ facie* evidence that the European British subject named therein has been, upon the summary enquiry mentioned in that section, determined to be and that he was at the date of the declaration a vagrant.

Exercise of power conferred on Local Government.

34. The powers and duties conferred and imposed by sections 16 and 18 on a Local Government may be exercised and performed by such class of officers as the Local Government [1] from time to time, by notification in the official Gazette, appoints in this behalf.

Exercise in Native States of powers conferred on Magistrates, Justices and Police.

35. The powers and duties conferred and imposed by this Act on Magistrates, Justices of the Peace exercising the powers of a Magistrate of the first class, and police-officers respectively may, in places beyond the limits of British India, be exercised and performed by such persons respectively as the Governor General in Council from time to time, by notification in the Gazette of India, appoints in this behalf.

Power to make rules for guidance of officers.

36. The Governor General in Council may from time to time make rules,[2] consistent with this Act, for the guidance of officers in matters connected with its enforcement.

All such rules shall be published in the Gazette of India, and shall thereupon have the force of law.

THE FIRST SCHEDULE.

(*See section 9.*)

Whereas *E. F.* of , a person of European extraction and holder of this certificate, has appeared before me and satisfied me that he is not likely to become a vagrant within the meaning of the European Vagrancy Act, 1874, THESE ARE TO CERTIFY that for the space

[1] For notifications making such direction in—
(1) Bombay . . . . *see* Bom. R. & O.;
(2) Madras . . . . *see* Mad. R. & O.;
(3) United Provinces . . *see* N.-W. P. and Oudh List of Local Rules and Orders, Ed. 1894, p. 43;
(4) Central Provinces . . *see* Central Provinces Gazette, 1905, Pt. III, p. 121.

[2] For rules made under the powers conferred by s. 36 of Act XXI of 1869, which are kept in force by s. 2 of this Act. *see* Gazette of India, 1870, Pt. I, p. 721, and for subsidiary rules for Burma, *see* Bur. R. M.

of months from the date hereof and within the Province [*or* District] of nothing in sections 4, 5, 6 and 7 of the same Act shall be deemed to apply to him, unless he is found asking for alms, IN WHICH CASE this certificate shall be void.

(Signed) *G. H.*,

Dated this day of 18 .

Magistrate of Police[1] for the town of *or* Justice of the Peace for exercising the powers of a Magistrate of the class.

THE SECOND SCHEDULE.

(*See section 17.*)

ARTICLES OF AGREEMENT made this day of 18 BETWEEN the Secretary of State for India in Council of the one part and *C. D.* of, etc., [*the vagrant*] of the other part; Each of the parties hereto (so far as relates to the acts on his own part to be performed) hereby agrees with the other of them as follows:—

1. The said *C.D.* shall proceed forthwith to the port of [*the port of embarkation*].

2. The said *C. D.* shall there embark on board such ship and at such time as an officer appointed in this behalf by the Local Government shall direct.

3. The said *C. D.* shall remain on board such ship until she shall have arrived at her port of destination.

4. The said *C. D.* shall not return to India until five years shall have elapsed from the date of such embarkation, unless specially permitted so to return by the said Secretary of State.

5. The said Secretary of State in Council shall defray the cost of the transit of the said *C. D.* to the said port, and of his lodging and subsistence during such transit and during his detention (if any) at the same port, and shall contract with the owner of the said ship, or his agent, for the passage of the said *C. D.* on board the said ship, and for his subsistence during the voyage for which he shall embark as aforesaid.

In witness whereof *A. B.* by order of the Governor General of India in Council [*or* the Governor of in Council *or* the Lieutenant-Governor of , *or* the Chief Commissioner of], on behalf of the said Secretary of State in Council, and the said *C. D.* have hereunto set their hands the day and year first above written.

[1] Read now "Presidency Magistrate," *see* the Code of Criminal Procedure, 1898 (Act V of 1898), s. 3, General Acts, Vol. V.

THE SCHEDULED DISTRICTS ACT, 1874.

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,, VI.—SCHEDULED DISTRICTS, CENTRAL PROVINCES.

,, VII.—THE CHIEF COMMISSIONERSHIP OF COORG.

,, VIII.—THE CHIEF COMMISSIONERSHIP OF THE ANDAMAN AND NICOBAR ISLANDS.

THE FIRST SCHEDULE: PART IX.—THE CHIEF COMMISSIONERSHIP OF AJMER AND MERWÁRA.
,, X.—THE CHIEF COMMISSIONERSHIP OF ASSAM.
,, XI.—THE HILL TRACTS OF ARAKAN.
,, XII.—THE PARGANA OF MÁNPUR.
,, XIII.—[*Repealed.*]

THE SECOND SCHEDULE.—ENACTMENTS REPEALED.

ACT No. XIV OF 1874.[1]

[*8th December 1874.*]

An Act to ascertain the enactments in force in various parts of British India, and for other purposes.

Preamble.

WHEREAS various parts of British India have never been brought within, or have from time to time been removed from, the operation of the general Acts and Regulations and the jurisdiction of the ordinary Courts of Judicature;

And whereas doubts have arisen in some cases as to which Acts or Regulations are in force in such parts, and in other cases as to what are the boundaries of such parts: And whereas among such parts are the territories specified in the first schedule hereto annexed, and it is expedient to provide readier means than now exist for ascertaining the enactments in force in such territories and the boundaries thereof, and for administering the law therein:

And whereas it is expedient to declare that certain Acts are in force in a tract of land lying between the Railway Station at Satná and the eastern boundary of the Jabalpur Division;

It is hereby enacted as follows:—

Short title.

1. This Act may be called the Scheduled Districts Act, 1874.

Local extent.

This Act extends in the first instance to the whole of British India other than the territories mentioned in the first schedule hereto annexed, and it shall come into force in each of the Scheduled Districts[2] on the issue of a notification under section 3 relating to such district.

Interpretation-clause.

In this Act the term "Scheduled Districts" means the territories mentioned in the first schedule hereto annexed; and, from the date

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1870, Pt. V, p. 36; for Proceedings in Council, *see ibid*, 1870, Supplement, pp. 187, 474 and 522; *ibid*, 1872, Supplement, p. 377; *ibid*, 1873, Supplement, p. 373; *ibid*, 1874, Supplement, pp. 1885 and 1976.

[2] For list of Scheduled Districts in which the Act has been brought into force, *see* Appendix A.

fixed in the resolution next hereinafter mentioned, it shall also include any other territory [1] to which the Secretary of State for India, by resolution in Council, may declare the provisions of the 33rd of Victoria,[2] chapter 3, section 1, to be applicable.

Repeal of enactments.

2. The enactments mentioned in the second schedule hereto annexed shall be repealed.

Notification of enactments in force in Scheduled Districts.

3. The Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by [3] notification in the Gazette of India and also in the local Gazette (if any)—

(*a*) declare what enactments are actually in force in any of the Scheduled Districts, or in any part of any such district,

(*b*) declare of any enactment that it is not actually in force in any of the said districts or in any part of any such district,

(*c*) correct any mistake of fact in any notification issued under this section:

Provided that a declaration once made under clause (*a*) or clause (*b*) of this section shall not be altered by any subsequent declaration other than a declaration under clause (*c*) of this section.

Effect of notification under section 3.

4. On the issue, under section 3, of a notification declaring what enactments are in force, or not in force, in any Scheduled District, the enactments so notified shall be deemed to be in force or not in force, according to the tenor of the notification, in such district, and every such notification shall be binding on all Courts of law.

Power to extend enactments to Scheduled Districts.

5. The Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by notification in the Gazette of India and also in the local Gazette (if any), extend to any of the Scheduled Districts, or to any part of any such district, any enactment which is in force in any part of British India at the date of such extension.

Modification of enactments in their application to Scheduled Districts.

[4] **5A.** In declaring an enactment in force in a Scheduled District or part thereof under section 3 of this Act, or in extending an enactment to a Scheduled District or part thereof under section 5 of this Act, the Local Government, with the previous sanction of the Governor General in Council, may declare the operation of the enactment to be subject to such restrictions and modifications as that Government thinks fit.

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[1] For list of such territories, *see* Appendix B. The Statute has been applied to Tappa Chaurasi, in the Mirzápur District of the North-Western Provinces, *see* Gazette of India, 1874, Pt. I, p. 133, but it is not a Scheduled District.

[2] Short title, the Government of India Act, 1870 (33 Vict., c. 3), Coll. Stat., Vol. I, Ed. 1899, p. 451.

[3] For notifications bringing the Act into force in Scheduled Districts, *see* Appendix A to this Act, *infra*.

[4] S. 5A was inserted by the Repealing and Amending Act, 1891 (XII of 1891).

Appointment of officers and regulation of their procedure.

6. The Local Government may from time to time—

(*a*) appoint officers[1] to administer civil and criminal justice and to superintend the settlement and collection of the public revenue, and all matters relating to rent, and otherwise to conduct the administration, within the Scheduled Districts,

(*b*) regulate the procedure[2] of the officers so appointed; but not so as to restrict the operation of any enactment for the time being in force in any of the said districts,

(*c*) direct by what authority any jurisdiction, powers or duties incident to the operation of any enactment for the time being in force in such district shall be exercised or performed.[3]

Continuance of existing rules and officers.

7. All rules heretofore prescribed by the Governor General in Council or the Local Government for the guidance of officers appointed within any of the Scheduled Districts for all or any of the purposes mentioned in section 6, and in force at the time of the passing of this Act, shall continue to be in force unless and until the Governor General in Council or the Local Government, as the case may be, otherwise directs.

All existing officers so appointed previous to the date on which this Act comes into force in such district shall be deemed to have been appointed hereunder.

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[1] For notifications issued under the powers conferred by this section in—

(1) Assam . . . . . *see* Assam List of Local Rules and Orders, Ed. 1893, pp. xx, xxi and xxii, Assam Gazette, 1903, Pt. II, pp. 628-629, E. B. and Assam Gazette, 1906, Pt. II, pp. 1218-33;

(2) Bombay . . . . . *see* Bom. R. & O.;

(3) Burma (in respect of Upper Burma) . . *see* Bur. R. M.:

(4) Madras . . . . . *see* Mad. R. & O.;

(5) United Provinces of Agra and Oudh . . . *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 152 c, U. P. Gazette, 1906, Pt. I, pp. 255, 994.

[2] For rules as to the Administration of the Lushái Hills, issued under this power, *see* Notification No. 978, dated 1st April, 1898, Assam Gazette, Pt. I, p. 380, *ibid*, 1902, Pt. II, p. 579, *ibid*, 1904, Pt. II, p. 787.

As to the Tarái Parganas of the North-Western Provinces, *see* Notification No. 1165, dated 29th December, 1897, North-Western Provinces and Oudh Gazette, 1898, Pt. I, p. 14.

For rules to regulate the procedure to be observed in carrying out imperfect partitions in the Kumaon Division, *see* N. W. P. and Oudh Gazette, 1899, Pt. I, p. 73.

For rules as to the Administration of Justice and the Police in the Jaintiá Hills, *see* Assam Gazette, 1874, p. 32, and Assam Gazette, 1898, Pt. II, p. 811.

For rules for the Administration of Justice and Police in the Sibsagar and Nowgong Mikir Hill Tracts, *see* E. B. and Assam Gazette, 1907, Pt. III, p. 3063.

For rules for the guidance of the Governor's Agent for the Godávari District, *see* Madras List of Local Rules and Orders, Ed. 1898, p. 34, and in Ganjam and Vizagapatam, *see ibid*, p. 254.

For rules for Civil and Criminal Administration of Mehwassi villages in Bombay, *see* Bombay List of Local Rules and Orders, Ed. 1896, p. 140; and for rules regulating Procedure of Civil Officers in Perim, *see ibid*, p. 149.

[3] For instance of such a notification in Burma, *see* Bur. R. M.
Ajmer-Merwara, *see* Aj. R. & O.

For notification directing that the Commissioner, Assam Valley Districts, shall exercise and perform the jurisdiction, powers and duties conferred or imposed on a Commissioner of Division by any enactment which is now in force or may hereafter be extended to any of these districts, *see* Assam Gazette, 1903, Pt. I, p. 11.

Settlement of questions as to boundary.

8. Whenever any question arises as to the line of boundary between any of the Scheduled Districts and other territory, such officer as the Local Government or (where the said district and the other territory are not subject to the same Local Government) as the Governor General in Council from time to time appoints, may consider and determine such line of boundary;

and the order made thereon by such officer, if confirmed by the Government which appointed him, shall be conclusive in all Courts of Justice.

Place of imprisonment or transportation.

9. Any person liable to be imprisoned or to be transported beyond sea under any order or sentence passed by any officer appointed under section 6 may (subject to such rules as the Governor General in Council may from time to time prescribe in this behalf) be imprisoned in such jail or transported to such place as the Local Government directs.

Extension to Satna strip of Acts relating to public gambling and pandhari-tax.

10. Acts No. III [1] of 1867,[2] * * * and No. XXV of 1869 [3] are hereby declared to be in force in the tract of land ceded to the British Government in the year 1863 and lying between the Railway Station at Satná and the eastern boundary of the Jabalpur District.

Saving of criminal jurisdiction over European British subjects, and saving of other laws.

11. Nothing contained in this Act or in any notification issued under the powers hereby conferred shall be deemed—

(*a*) to affect the criminal jurisdiction of any Court over European British subjects, or

(*b*) to affect any law other than laws contained in Acts or Regulations or in rules made in exercise of powers conferred by such Acts or Regulations.

THE FIRST SCHEDULE.

(*See section 1.*)

PART I.

SCHEDULED DISTRICTS, MADRAS.

I.—In Ganjám.

(1) The Gumsur Maliahs, including Chokapad.
(2) The Surada Maliahs.
(3) The Chinna Kimedi Maliahs.

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[1] E. B. & A. Code.
[2] So much of this section as related to Act XIV of 1867 was repealed by Act VI of 1902; the words and figures " No. XIV of 1867 " have accordingly been omitted.
[3] Act XXV of 1869 was repealed by the Repealing and Amending Act, 1891 (XII of 1891). *See* now the Indian Salt Act, 1882 (XII of 1882), General Acts, Vol. III.
[4] For a list of districts which since the passing of the Act have become " Scheduled Districts," *see* Appendix B, *infra.*

THE FIRST SCHEDULE—*continued.*

PART I—*concluded.*

SCHEDULED DISTRICTS, MADRAS—*concluded.*

I.—In Ganjam—concluded.

(4) The Pedda Kimedi Maliahs.
(5) The Bodaguda Maliahs.
(6) The Surangi Maliahs.
(7) The Parla Kimedi Maliahs.
(8) The Muttás of Koradá and Ronaba (otherwise called Śrikarma).
[(9) *The Chighatti Maliah.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*
(10) The Juradá Maliah.
(11) The Jalantra Maliah.
(12) The Mandasa Maliah.
(13) The Budarasinghi Maliah.
(14) The Kuttingia Maliah.

II.—In Vizagapatam.

(1) The Jeypur Zamíndárí.
(2) Golconda Hills west of the River Boderu.[1]
(3) The Madugol Maliahs.
(4) The Kasipur Zamíndárí.
(5) The Panchipenta Maliahs.
(6) Mondemkolla, in the Merangi Zamíndárí.
[2][(7) The Konda Muttá of Merangi.]
(8) The Gumma and Konda Muttás of Kurpam.
(9) The Kottam, Rám and Konda Muttás of Pálkonda.

III.—In the Godávari District.[3]

(1) The Bhadráchalam Táluq.
(2) The Rákapilli Táluq.
(3) The Rampá Country.

IV.—In the Indian Ocean.

The Laccadive Islands, including Minicoy.

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[1] The Duchatri and Guditeru Muttás in the Golconda Hills have been transferred from the VIZAGAPATAM to the GODAVARI District, see Fort St. George Gazette, 1881, Pt. I, p. 336.
[2] This clause was substituted for the original clause (7) by the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol. IV. That clause ran as follows :—
"(7) The Konda Muttá of Belgám."
[3] For additional Scheduled Districts in the GODAVARI District, *see* Appendix B.

(*The First Schedule.—Scheduled Districts.*)

THE FIRST SCHEDULE—*continued.*

PART II.

SCHEDULED DISTRICTS, BOMBAY.

I.—The Province of Sindh.[1]

II.—[*The Panch Mahâls.*] *Rep. by the Panch Mahâls Laws Act, 1885 (VII of 1885), with effect from the 1st May 1885.*

III.—Aden.[2]

IV.—The villages belonging to the following Mehwassi Chiefs:—

(1) The Párví of Káthí.

(2) The Párví of Nál.

(3) The Párví of Singpúr.

(4) Walwi of Gaohálí.

(5) The Wássawa of Chikhlí.

(6) The Párví of Nawalpúr.

PART III.

SCHEDULED DISTRICTS, BENGAL.

I.—The Jalpáigurí and Darjeeling Districts.[3]

II.—The Hill Tracts of Chittagong.[4] [5]

III.—The Sonthál Parganas.[4] [5]

IV.—The Chutiá Nágpur Division.[4] [6]

V.—The [7][Mahál of Angul.][5]

[1] The Government of India Act, 1870 (33 Vict., c. 3), has been applied to the following districts bordering on the frontier of Sindh, namely :—the Districts (táluquas) of Kohistan, Johi, Nasirabad, Sujawul, Sehwan, Kakkar, Kambar, Jacobabad, Thul and Kasmur, from Mithee on the Indus to the sea west of Karachi.

[2] The Government of India Act, 1870 (33 Vict., c. 3), has been applied at different times to Aden, the Island of Perim and the Settlement of Aden and its Dependencies (for the time being) inclusive of the villages of Shaikh Othman, Imad and Hiswa, the Island of Perim and Little Aden. As to what Aden includes for the purposes of all enactments heretofore or hereafter passed or made, *see* s. 2 of the Aden Laws Regulation, 1891 (II of 1891), Bom. Code.

[3] "Districts" was substituted for "Divisions" by the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol. IV.

[4] The Act has not been brought into force in the Hill-tracts of Chittagong (excluding that portion known as Rutton Puiya's villages including Demagiri, now forming part of the Lushái Hills District under the Chief Commissioner of Assam), the Santhál Parganas and such portions of the Chutiá Nágpur Division as are not comprised within the Districts of Hazáribágh, Lohárdaga (now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44) Palamau or Mánbhum, or within the Pargana Dhálbhum, the Kolhán or the Porahát Estate in the District of Singbhum.

[5] The Government of India Act, 1870 (33 Vict., c. 3), has been applied to these territories.

[6] The *Thanas of Raipur and Khattra*, which formerly formed portion of the Chutiá Nágpur Division, have been transferred to the District of Bankura, and ceased to be a Scheduled District on the 1st October, 1879, *see* the Raipur and Khattra Laws Act, 1879 (XIX of 1879), Ben. Code.

The ESTATE OF PORAHÁT now form part of the Chutiá Nágpur Division Scheduled District, *see* the Porahát Estate Act, 1893 (II of 1893), s. 3, Ben. Code.

[7] These words were substituted for the words "Mahâls of Angul and Banki" with effect from the 1st April, 1882, by the Banki Laws Act, 1881 (XXV of 1881), s. 4, Ben. Code.

The KHONDMALS, in Orissa (which now form part of the Angul District, *see* the Angul District Regulation, 1894 (I of 1894), s. 2. Ben. Code), are a Scheduled District, *see* Appendix B.

(*The First Schedule.—Scheduled Districts.*)

THE FIRST SCHEDULE—*continued.*

PART IV.

SCHEDULED DISTRICTS, NORTH-WESTERN PROVINCES.

I.—[*The Jhánsí Division, comprising the Districts of Jhánsí, Jalaun and Lalatpur.*] *Rep. by the North-Western Provinces and Oudh Act, 1890 (XX of 1890) s. 8 (1), with effect from the 1st April, 1891.*

II.—The Province of Kumáon and Garhwál.

III.—The Tarái Parganas, comprising—Bázpúr, Káshípúr, Jaspúr, Rudarpúr, Gadarpúr, Kilpúrí, Nának-Matthá and Bilherí.[1]

IV.—In the Mirzápur District—

(1) The tappás of Agori Khás and South Kon in the Pargana of Agori.

(2) The tappá of British Singrauli in the Pargana of Singrauli.

(3) The tappás of Phulwá, Dudhi and Barhá in the Pargana of Bichipár.

(4) The portion lying to the South of the Kaimor Range.

[V.—*The Family Domains of the Mahárájá of Benares, comprising the following parganas: Bhadohi and Kheyra Mangror in the Mirzápur District; Kaswá Rájá in the Benares District.*] *Rep. by the Benares Family Domains Act, 1881 (XIV of 1881), s. 14, with effect from the 24th September 1881.*

VI.—The tract of country known as Jaunsar Báwar in the Dehrá Dún District.

PART V.

SCHEDULED DISTRICTS, PUNJAB

The Districts of Hazára,[1] Pesháwar,[1] Kohát,[1] Bannu,[1] Dera Ismail Khán,[1] Dera Ghází Khán,[1] Lahaul and Spiti.[1]

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[1] The Government of India Act, 1870 (33 Vict., c. 3), has been applied to these territories.

Portions of the Districts of Hazara, Bannu and Dera Ismail Khán and the Districts of Peshawar and Kohat now form the N.-W. Frontier Province, *see* Notification No. 5780, dated the 25th October, 1901; Gazette of India, 1901, Pt. I, p. 857.

THE FIRST SCHEDULE—*continued.*

PART VI.

SCHEDULED DISTRICTS, CENTRAL PROVINCES.

Chhattisgarh Zamíndáris, viz.—

1. Khariár.
2. Bindrá Nawágarh.
3. Sahezpúr.
4. Gándai.
5. Silhetí.
6. Barbaspúr.
7. Thákurtolá.
8. Lohárá.
9. Gondardehí.
10. Fingeswar.
11. Pándariá.
12. Pendrá.
13. Mátín.
14. Uprorá.
15. Kendá.
16. Láphá.
17. Chhúrí.
18. Korbá.
19. Chapá.
20. Borá Sámbhar.
21. Phúljhar.
22. Kolábira.
23. Rámpúr.

Chándá Zamíndáris.

1. Ahírí.
2. Ambágarh Chaukí.
3. Aundhí.
4. Dhanorá.
5. Dúdhmálá.
6. Gewardá.
7. Jhárápáprá.
8. Khutgáon.
9. Koráchá.
10. Kotgal.
11. Muramgáon.
12. Pánábáras.
13. Palasgarh.
14. Rángí.
15. Sirsundí.
16. Sonsarí.
17. Chándálá.
18. Gilgáon.
19. Páwí Mutándá.
20. Pategáon.

Chhindwárá Jágírdáris.

1. Haraí.
2. Chháter.
3. Gorakhghát.
4. Gorpání.
5. Baktágarh.
6. Bardágarh.
7. Pachmarhí.
8. Partábgarh.
9. Almod.
10. Sonpúr.
11. Bariám Pagárá.

(*The First Schedule.—Scheduled Districts.*)

THE FIRST SCHEDULE—*concluded.*

PART VII.

The Chief Commissioner of Coorg.[1]

PART VIII.

The Chief Commissioner of the Andaman and Nicober Islands.[1] [2]

PART IX.

The Chief Commissionership of Ajmer and Merwára.[1]

PART X.

The Chief Commissionership of Assam.[1]

PART XI.

The Hill Tracts of Arakan.[1]

PART XII.

The Pargana of Mánpur.

[PART XIII.—*The Cantonment of Morar.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

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[1] The Government of India Act, 1870 (33 Vict., c. 3), has been applied to these territories.

[2] The *Little Cocos Island* has been transferred to the administration of the Chief Commissioner of Burma, and ceased to be a Scheduled District on the 29th November 1882, *see* the Little Cocos and Preparis Islands Laws Act, 1883 (VIII of 1883), a revised edition of which as modified up to 1st October 1902, has been published by the Legislative Department.

THE SECOND SCHEDULE.

(*See section 2.*)

Number and year.	Title.
XI of 1846 . . .	An Act for the exemption of certain Territory in the Province of Candeish and the Zilah Ahmednuggur from the operation of the General Regulations.
[1] XXXVII of 1855. .	An Act to remove from the operation of the general Laws and Regulations certain Districts inhabited by Santháls and others, and to place the same under the superintendence of an officer to be specially appointed for that purpose.
[1] X of 1857 . . .	An Act to amend Act XXXVII of 1855.
[2] * * * *	* * * * * *
XIV of 1861 . . .	An Act to remove certain tracts of Country in the Rohilkund Division from the jurisdiction of the tribunals established under the General Regulations and Acts.
XIX of 1864 . . .	An Act to remove certain tracts of Country in the District of Mirzapore from the jurisdiction of the local Courts.
IV of 1868 . . .	An Act to exempt certain villages in the Bombay Presidency from the operation of the Regulations and Acts in force in that Presidency.
XXII of 1869 . . .	An Act to remove the Gáro Hills from the jurisdiction of the tribunals established under the General Regulations and Acts and for other purposes.
[2] * * * *	* * * * * *

[1] Ben. Code Acts XXXVII of 1855 and X of 1857 are still in force in the Santhál Parganas as Act XIV of 1874 has not yet been declared in force there.

[2] The entries relating to Act XXII of 1860 and to Bengal Act IV of 1863 were repealed by the Chittagong Hill-tracts Regulation, 1900 (I of 1900), s. 20; Ben. Code.

(*Appendix A.*)

APPENDIX A.

Scheduled Districts in which the Scheduled Districts Act, 1874, has been brought into force by notification under section 3 of the Act.

1	2	3	4
Presidency or Province.	Scheduled Districts.	No. and date of Notification.	Gazette in which the Notification is published
Madras .	The Táluqs of Bhadráchalam and Rákapilli and the Rampá Country.	728, dated 26th June, 1879.	India, 1879, Pt. I, p. 437.
		Dated 20th June, 1879.	Fort St. George, 1879, Pt. I, p. 462.
	The remaining Scheduled Districts of Madras, as existing on the 19th February, 1889.	82, dated 19th February, 1889.	India, 1889, Pt. I, p. 151.
		83, dated 19th February 1889.	Fort St. George, 1889, Pt. I, p. 121.
	The villages in the Godávari District to which, by Resolution dated the 4th April, 1891, the provisions of 33 Vict., cap. 3, s. 1, were made applicable.	1604, dated 11th August, 1893.	India, 1893, Pt. I, p. 516.
		330, dated 11th August, 1893.	Fort St. George, 1893, Pt. I, p. 1000.
Bombay .	The Province of Sindh . .	1471, dated 1st October, 1877.	India, 1877, Pt. I, p. 578. Bombay, 1877, Pt. I, p. 871.
	[1] Aden	703, dated 20th June, 1879.	India, 1879, Pt. I, p. 434. Bombay, 1879, Pt. I, p. 624.
	[2] The Island of Perim . .	322, dated 10th February, 1886.	India, 1886, Pt. I, p. 86. Bombay, 1886, Pt. I, p. 105.
	The villages belonging to the following Mehwassi Chiefs :— (1) The Párví of Káthí. (2) „ „ Nál. (3) „ „ Singpúr. (4) The Walwi of Gaohállí. (5) The Wassáwa of Chikhlí. (6) The Párví of Nawalpúr.	172, dated 14th February, 1879.	India, 1879, Pt. I, p. 106. Bombay, 1879, Pt. I, p. 115.
Bengal . .	The Western Dvárs in the Jalpáiguri District.	Dated 14th September, 1875.	India, 1875, Pt. I, p. 497. Calcutta, 1875, Pt. I, p. 1148.
	The Districts of Jalpáiguri (except the Western Dvárs) and Darjeeling.	1664 A., dated 5th November, 1877.	India, Extraordinary, 14th November, 1877.
		Dated 5th November 1877.	Calcutta, 1877, Pt. I, p. 1623.

1 As to what is included in "Aden," *see* footnote under entry III, Part II, Sched. I, *supra*.

2 *See* Appendix B, *infra*.

(*Appendix A.*)

Scheduled Districts in which the Scheduled Districts Act, 1874, has been brought into force by notification under section 3 of the Act—contd.

1	2	3	4
Presidency or Province.	Scheduled Districts.	No. and date of Notification.	Gazette in which the Notification is published.
Bengal—*contd.*	The following portions of the Chutiá Nágpur Division, namely :—		
	the Districts of Hazáribágh, Lohárdaga [1] and Mánbhum, and Pargana Dhálbhum in the District of Singbhum ;	1664 A., dated 5th November, 1877.	India, Extraordinary, 14th November, 1877.
		Dated 5th November, 1877.	Calcutta, 1877, Pt. I, p. 1623.
	the Kolhán, in the District of Singbhum ;	1393, dated 21st October, 1881.	India, 1881, Pt. I, p. 504. Calcutta, 1881, Pt. IA, p. 189.
	the Estate of Porahát, in the District of Singbhum.	2296 P., dated 2nd August, 1895.	India, 1895, Pt. I, p. 685. Calcutta, 1895, Pt. I, p. 765.
	[2] The Mahál of Angul . .	1664 A., dated 5th November, 1877.	India, Extraordinary, 14th November, 1877.
		Dated 5th November, 1877.	Calcutta, 1877, Pt. I, p. 1623.
North-Western Provinces.	[3] Kumáon and Garhwál. .	1746, dated 2nd November, 1876.	Calcutta, 1877, Pt. I, p. 1623.
		566 A., dated 5th December, 1876.	India, 1876, Pt. I, p. 605. N.-W. P., 1876, p. 1548.
	[3] Tarái District . . .	1553, dated 22nd September, 1876.	India, 1876, Pt. I, p. 505. N.-W. P., 1876, p. 1278.
	The Scheduled portion of the Mirzápur District.	636, dated 30th May, 1879.	India, 1879, Pt. I, p. 383. N.-W. P., 1879, p. 775.
	Pargana Jaunsar Báwar, in the Dehrá Dún District.	632, dated 30th May, 1879.	India, 1879, Pt. I, p. 381. N.-W. P., 1879, p. 774.
Punjab .	The Scheduled Districts of the Punjab.	144 J., dated 18th September, 1877.	India, 1877, Pt. I, p. 562. Punjab, 1877, Pt. II, p. 1107.

[1] The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894. Lohárdaga is now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44.

[2] The Scheduled Districts Act was again declared in force in Angul, and was declared in force in the Khondmals, by the Angul District Regulation, 1894 (I of 1894), s. 3, Ben. Code.

[3] The Scheduled Districts Act itself has not been expressly declared in force in Kumaon, Garhwál or the Tarái District, but the Act has been brought into force in those places by the issue of notifications under section 3, declaring other enactments in force.

(*Appendix A.*)

Scheduled Districts in which the Scheduled Districts Act, 1874, has been brought into force by notification under section 3 of the Act—concld.

1	2	3	4
Presidency or Province.	Scheduled Districts.	No. and date of Notification.	Gazette in which the Notification is published.
Central Provinces.	The Scheduled Districts of the Central Provinces.	449, dated 10th April, 1878.	India, 1878, Pt. I, p. 266. Central Provinces, 1878, Pt. I, p. 83.
Coorg . .	The Chief Commissionership of Coorg.	365, dated 22nd February, 1875.	India, 1875, Pt. I, p. 95.
Andaman and Nicobar Islands.	The Chief Commissionership of the Andaman and Nicobar Islands.	75, dated 15th March 1878.	India, 1878, Pt. I, p. 132.
Ajmere and Merwára.	Ajmere and Merwára . .	169 J dated 19th October, 1877.	India, 1877. Pt. I, p 605.
Assam . .	The Chief Commissionership of Assam.	1651, dated 3rd November, 1877.	India, 1877, Pt. I, p. 662.
		Dated 7th November, 1877.	Assam, 1877, Pt. I, p. 383.
	The Lushái Hills (formerly known as the North and South Lushái Hills) and Rutton Puiya's villages, including Demagiri, in the Chittagong Hill-tracts.	921 P., dated 1st April, 1898.	India, 1898, Pt. II, p. 345. Assam, 1898, Pt. I, p. 379.
Burma . .	The Hill-tracts of Arakan, in Lower Burma.	346, dated 14th August, 1889.	India, 1889, Pt. I, p. 450. [1] Burma, 1889, Pt. I, p. 369.
	Upper Burma (except the Shan States).	Dated 26th October, 1886.	India, 1886, Pt. I, p. 664.[2] Burma, 1886, Pt. I, p. 335.
Central India Agency	The Pargana of Mánpur .	1397 I., dated 18th March, 1887.	India, 1887, Pt. I, p. 157.
British Baluchistan.	The Chief Commissionership of British Baluchistan.	63 F. C., dated 8th December, 1887.	India, 1887, Pt. I, p. 612.[3]

[1] The Scheduled Districts Act had previously been declared in force in the Arakan Hills by the Arakan Hill District Laws Regulation, 1874 (IX of 1874), as amended by the Burma Laws Act, 1898 (XIII of 1898), Bur. Code.

[2] The Scheduled Districts Act has also been declared in force in Upper Burma (except the Shan States by the Burma Laws Act, 1898 (XIII of 1898). s. 4 (1) and Sch. I, Bur. Code. As to the operation of the Scheduled Districts Act, 1874, on the transfer of territory from Upper to Lower Burma or *vice versâ*, see. s. 14 of *ibid.*

[3] The Scheduled Districts Act was again declared in force in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890), s. 3, Bal. Code.

APPENDIX B.

Territories which have become Scheduled Districts by virtue of the concluding portion of the third paragraph of section 1 of the Scheduled Districts Act, 1874, namely, those to which the Secretary of State for India has, by Resolution in Council, declared the provisions of the Government of India Act, 1870 (33 Vict., c. 3), section 1, to be applicable.

1	2	3	4
Presidency or Province.	Territories.	Date from which the Resolution took effect.	Gazette of India in which the Resolution is published.
Madras	In the Godávari District— (1) the unsettled Government villages in the Yernagudem Táluk; (2) the villages of the ex-Mansab of Jaddengi; and (3) the following petty proprietary estates, namely, Bayanagudem, Billamilli, Janganreddigudem, Gutala, Gangolu, Patteshim, Polavaram, Petta, Dangengi, Viravaram and Davipatram.	8th May, 1883.	1883, Pt. I, p. 265.
	In the Godávari District— (1) the following villages of the Ernagudem Táluk:— (*a*) the settled Government villages of Ganapavaram, Taduvaya and Parimpudi; (*b*) the Agraharams of Ragolopalli, Saggonda, Dondapudi, Palacherla Rajavaram, Ayyanani Polavaram Srinivasapuram, Pallipudi, Ramanujapuram and Kristnapuram; (2) the following villages of the Rajahmundry Táluk:— (*c*) the Lakkonda Sima of Gangaram, Lakkonda, Pidatamamdi, Vanayapadu, Vojubanda, Potamdorapallem, Jaggampalam, Jiyyampallam, Rajaram, Neladonalapadu, Kondalapallam, Kumarapadu, Rajupeta Loddi, Yamnapalli, Vunmetta, Chodaram, Loddipallem, Rajampallem, Botireddi Sivan Patnam, Gadichinnampallem, Mattapdu, Kundumullapallem,	4th April, 1891.	1891, Pt. I, p. 248.

(*Appendix B.*)

Territories which have become Scheduled Districts by virtue of the concluding portion of the third paragraph of section 1 of the Scheduled Districts Act, 1874, namely, those to which the Secretary of State for India has by Resolution in Council, declared the provisions of the Government of India Act, 1870 (33 Victoria, Chapter 3), section 1, to be applicable—concld.

1	2	3	4
Presidency or Province.	Territories.	Date from which the Resolution took effect.	Gazette of India in which the Resolution is published.
Madras—*concld.*	Vemmlana, Auttagondi Bandam, Vuyyalamadugu, Agraharapadu, Pedagarlapadu, Goragumovi, Pundapottipallem, Kusamaranj, Amudalabandu, Doramamidi, Yerrampallem, Kottada, Donalapalli, Surampalem, Chinagarlapudu; (*d*) the unsettled independent villages of Boyyanapalli, Kotta Ramavaram, Pataramavaram, Uppulapadu Narassapuram, Ravilanka, Pedda Bhimpali, Nellapudi, Lingavaram, Moller, Kattumili, Ramadevipuram and Dokulamanda Kistnavaram.		
Assam .	[1]The North Lushái Hills .	6th September, 1895.	1895, Pt. I, p. 935.
	The Mokokchang subdivision of the Nágá Hills District.	21st October, 1896.	1897, Pt. I, p. 38.
Bengal . .	The Khondmals in Orissa .	28th July, 1891.	1891, Pt. I, p. 537.
	[1]The South Lushái Hills .	6th September, 1895.	1895, Pt. I, p. 935.
Burma . .	Upper Burma (except the Shan States).	1st March, 1886.	1886, Pt. I, p. 311.
	The Chin Hills . . .	6th September, 1895.	1895, Pt. I, p. 936.
British Baluchistan.	The territories for the time being under the administration of the Chief Commissioner of British Baluchistan. (These territories include the tracts known as Peshin, Shararud, Kach, Kawas, Harnai, Sibi and Thal Chotiali.)	1st November, 1887.	1887, Pt. I, p. 591.

[1] These Hills, together with Rutton Puiya's villages, including Demagiri in the Chittagong Hill-tracts, are now known as the Lushái Hills, *see* Notification No. 592 E.-B., dated 1st April, 1898, Assam Gazette, 1898, Pt. I, p. 378. The combined territory has been placed under the administration of the Chief Commissioner of Assam and included within that Province—*see* Proclamation No. 591 S. B., dated 1st April, 1898, Gazette of India, 1898, Pt. I, p. 369.

THE LAWS LOCAL EXTENT ACT, 1874.

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SIXTH SCHEDULE :

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„ III.—SCHEDULED DISTRICTS, BENGAL.
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„ VII.—THE CHIEF COMMISSIONERSHIP OF COORG.
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„ X.—THE CHIEF COMMISSIONERSHIP OF ASSAM.
„ XI.—THE HILL TRACTS OF ARAKAN.
„ XII.—THE PARGANA OF MÁNPUR.
„ XIII.—[*Repealed.*]

SEVENTH SCHEDULE. [*Repealed.*]

ACT No. XV OF 1874.[1]

[*8th December 1874.*]

An Act for declaring the local extent of certain Enactments, and for other purposes.

Preamble.

WHEREAS it is expedient to declare the local extent of certain Acts passed by the Governor General of India in Council, the Legislative Council of India, and the Council of the Governor General of India assembled for the purpose of making Laws and Regulations;

And whereas it is also expedient to consolidate the laws relating to the local extent of certain Acts and Regulations in the Presidencies of Fort St. George and Bombay, and in the Lower and the North-Western Provinces of the Presidency of Fort William in Bengal;

It is hereby declared and enacted as follows:—

Short title.

1. This Act may be called the Laws Local Extent Act, 1874.

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[1]For the Statement of Objects and Reasons, *see* Gazette of India, 1870, Pt. V, p. 153; and for Proceedings in Council, *see ibid*, 1871, Supplement, pp. 1074 and 1218; and *ibid*, 1874, Supplement, pp. 1885 and 1976.

Act XV of 1874 (except ss. 4-7) has been declared in force in the Hill District of Arakan by the Arakan Hill District Laws Regulation, 1874 (IX of 1874), as amended by the Burma Laws Act, 1898 (XIII of 1898), Bur. Code.

Interpretation-clause.

2. In this Act the expression "Scheduled Districts" means the territories mentioned in the sixth schedule hereto annexed.

Local extent of Acts in first schedule.

3. The Acts mentioned in the first schedule hereto annexed are now in force throughout the whole of British India, except the Scheduled Districts.

Local extent of enactments in second schedule.

4. The enactments mentioned in the second schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Governor of Fort St. George in Council, except the Scheduled Districts subject to such government.

Local extent of enactments in third schedule.

5. The enactments mentioned in the third schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Governor of Bombay in Council, except the Scheduled Districts subject to such government.

Local extent of enactments in fourth schedule.

6. The enactments mentioned in the fourth schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Lieutenant-Governor of Bengal, except the Scheduled Districts subject to such government.

Local extent of enactments in fifth schedule.

7. The enactments mentioned in the fifth schedule hereto annexed are now in force throughout the whole of the territories now subject to the government of the Lieutenant-Governor of the North-Western Provinces of the Presidency of Fort William, except the Scheduled Districts subject to such government.

Savings.

8. Nothing herein contained shall—

(*a*) bar the power of the Governor General in Council or the Local Government, under any law for the time being in force, to extend to any place any Act mentioned in the said first schedule;

(*b*) extend any Act empowering the Local Government to extend the same or any part thereof, or affect in any manner the exercise of such power;

(*c*) affect the operation of any Act or Regulation heretofore extended to or declared to be in force in any of the Scheduled Districts;

(*d*) revive any enactment which has been repealed either generally or with reference to some special subject;

(*e*) [*Rep. by Act VIII of 1887*];

(*f*) [*Rep. by the Repealing and Amending Act, 1891 (XII of 1891)*];

(*g*) [*Rep. by the Guardians and Wards Act, 1890 (VIII of 1890)*];

(*h*) [*Rep. by Act VIII of 1887*];

(*i*) [*Rep. by the Repealing and Amending Act, 1894 (IV of 1894)*];

(*j*) extend to any of the Towns of Calcutta, Madras and Bombay any law not now in force therein;

[1][(*jj*) extend to Pargana Bhadohi or Pargana Kera Mangror in the Mirzápur District, or to Pargana Kaswa Raja in the Benares District, any law not now in force therein;]

[1] Cl. (*jj*) was inserted by the Benares Family Domains Act 1881 (XIV of 1881), s. 15, U. P. Code.

(*First Schedule.—Enactments in force throughout the whole of British India, except the Scheduled Districts.*)

(*k*) affect the operation of any enactment not mentioned in any of the schedules hereto annexed.

9. [*Enactments repealed.*] *Rep. by the Repealing Act, 1876 (XII of 1876).*

FIRST SCHEDULE.[1]

(*See section* 3.)

ACTS OF THE SUPREME COUNCIL.

Year and Number.	Subject.
[2] 1836, XXVI	*Governor General's Camp Police.*
1837, IV	Power to acquire land.
1838, XXV	Wills executed before the 1st January 1866.
1839, XXIX	Dower, when marriage was contracted before 1st January 1866.
,, XXX	Inheritance, where descent took place before 1st January 1866.
[3] ,, XXXII	Interest.
1841, X	Registration of ships.
,, XIX	Curators in cases of successions.
1843, V	Slavery.
1847, XX	Copyright.
1850, V	Coasting Trade.
[3] ,, XI	Navigation Laws.

[1] Act XV of 1874, having been repealed, so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from this schedule :—

Enactments omitted.	Repealing Acts.
Act VI of 1840	Act XXVI of 1881.
,, XI of 1841	,, VIII of 1887.
,, XVIII of 1841	,, XI of 1878.
,, IX of 1842	,, XII of 1891.
,, XII of 1842	,, VIII of 1887.
,, XXXIII of 1852	
,, XVIII of 1854	,, XII of 1891.
,, III of 1859	,, VIII of 1887.
,, VIII of 1859	,, XII of 1891.
,, XIV of 1859, s. 15	
,, XV of 1859	
,, XXVII of 1860	,, VII of 1889.
,, IX of 1861	,, VIII of 1890.
,, XXIII of 1861	,, XII of 1891.
,, VI of 1863	
,, XI of 1865	,, IX of 1887.
,, X of 1866	,, XII of 1891.
,, X of 1867	,, IX of 1887.
,, X of 1868	,, XII of 1891.

[2] Act XXVI of 1836 was repealed by the Repealing and Amending Act, 1891 (XII of 1891).

[3] General Acts, Vol. I.

(First Schedule.—Enactments in force throughout the whole of British India, except the Scheduled Districts.)

FIRST SCHEDULE—*continued.*

ACTS OF THE SUPREME COUNCIL—*continued.*

Year and Number.	Subject.
[1] 1850, XII	Default of Public Accountants.
„ XVIII	Protection of Judicial Officers.
„ XIX	Binding of Apprentices.
„ XXI	Non-forfeiture of rights by loss of Caste.
„ XXXIV	State Prisoners.
„ XXXVII	Inquiries into the behaviour of Public Servants.
1852, XXX	Naturalization of Aliens.
1853, II	Burdens on land.
1854, XXXI	Barring entails: Conveyances by married women.
1855, XI	Mesne profits and improvements.
„ XII	Executors and Administrators.
„ XIII	Compensation for loss occasioned by death caused by actionable wrong.
„ XXIII	Administration of mortgaged estates in cases of descents occurring or devises made before the 1st January 1866.
„ XXIV	Penal servitude.
„ XXVIII	Interest.
[2] 1856, IX	Bills of lading.
„ XI	Desertion by European Soldiers.
„ XV	Marriage of Hindu Widows.
1857, XI	Offences against the State.
„ XXV	Forfeiture by Mutineers.
1858,	State Prisoners.
„ XXXV	Estates of Lunatics not subject to jurisdiction of Supreme Courts.
„ XXXVI	Lunatic Asylums.
1859, I	Merchant Seamen.
„ IX	Sections 16, 17, 18 and 20—Forfeitures.
1860, XXI	Registration of Societies.
1862, III	Government Seal.
1863, XVI	Excise Duty payable on Spirits used in Arts and Manufactures.
„ XXIII	Claims to Waste-lands.
„ XXXI	Gazette of India.
1864, III	Foreigners.
„ VI	Whipping.
1865, III	Common Carriers.
„ XV	Marriage and Divorce among Parsis.
„ XXI	Intestate Succession among Parsis.
[3] 1866, V	Bills of Exchange, Commercial Law.

[1] Act XII of 1850, *see* General Acts, Vol. 1, is repealed locally in Assam by the Assam Land Revenue Regulation, 1886 (I of 1886) E. B. and A. Code.

[2] General Acts, Vol. I.

[3] Repealed by the Transfer of Property Act, 1900 (II of 1900), s. 5, General Acts, Vol. V.

(Second Schedule.—Enactments in force throughout the whole of the territories subject to the government of the Governor of Fort St. George in Council, except the Scheduled Districts.)

FIRST SCHEDULE—*concluded.*

ACTS OF THE SUPREME COUNCIL—*concluded.*

Year and Number.	Subject.
[1] 1866, XXI	Dissolution of Marriages of Native Converts.
[1] ,, XXVIII	Trustees and Mortgagees' Powers.
[2] 1867 XXV	Printing Presses, etc.
[3] 1869, XV	Evidence of Prisoners.
[3] 1870, I	Quarantine.

SECOND SCHEDULE.[4]

(See section 4.)

(*a*).—MADRAS REGULATIONS.

Year and Number.	Subject.
1802, III (s. 1, part of s. 16 only)	Procedure of Civil Courts.
[5] ,, XIX (s. 2)	Covenanted Civil Servants forbidden to lend.
[5] ,, XXV	Settlement of land-revenue.
[5] ,, XXVI (ss. 1, 2 and 3 only).	Registration of malguzari land.
[6] ,, XXIX	Karnams.
[5] 1803, I	Board of Revenue.
[5] ,, II	Conduct of Collectors, etc.

[1] Act XV of 1874, so far as it relates to Act V of 1866, ss. 11, 12 and 13, is repealed by Act XXVI of 1881. So much of Act V of 1866 as is now in force is printed in the General Acts, Vol. I.

[2] General Acts, Vol. I.

[3] For Act XV of 1869, *see supra*; Act I of 1870 was repealed by Act III of 1900.

[4] Act XV of 1874 having been repealed, so far as it relates to the following enactments by the Acts noted against each, the references to those enactments have been omitted from this schedule :—

Enactments omitted.	Repealing Acts.
Mad. Reg. III of 1802, s. 11	Act XII of 1891.
,, ,, V ,, 1802, s. 30.	,, XI of 1901.
,, ,, XIII ,, 1802	Do.
,, ,, I ,, 1805	,, XII of 1891.
,, ,, II ,, 1807	
,, ,, IV ,, 1816	
,, ,, IX ,, 1816, s. 43	
,, ,, XIV ,, 1816	
,, ,, I ,, 1819	,, XII of 1876.
,, ,, IV ,, 1821, s. 4.	
,, ,, III ,, 1831	
,, ,, VII ,, 1832	
,, ,, XI ,, 1832	,, VI of 1878.
,, ,, XIV ,, 1832	,, XIII of 1889.

[5] Mad. Code

[6] Madras Regulation XXIX of 1802 is repealed locally by Madras Act II of 1894. The Regulation is printed in the Madras Code, Ed. 1888, p. 12.

(Second Schedule.—Enactments in force throughout the whole of the territories subject to the government of the Governor of Fort. St. George in Council, except the Scheduled Districts.)

SECOND SCHEDULE—*continued.*

(*a*).—MADRAS REGULATIONS—*concluded.*

	Year and Number.		Subject.
[1]	1804,	V	Court of Wards.
	1806,	II [2][(s. 7, cl. second)] .	Collectors and Karnams.
	1808,	VII	Martial Law.
	1816,	V	Village Panchâyats.
	1816,	XI	Sections 8, 9, 10—Heads of villages: Section 11, cl. 1—Stolen property: Section 13—Discovery of corpses: Section 14—Register of persons confined by heads of villages; and Section 47—Magistrates charged with maintenance of peace.
	„	XII [4]	Reference of claims regarding land and produce to Village and District Panchâyats.
	1817,	VII	Maintenance of Bridges, etc.; Escheats.
	„	VIII (s. 9 only) . . .	Sale for arrears of revenue of estate belonging to Native Officer or Soldier.
[3]	1819,	II	State Prisoners.
	1822,	IV	Explanation of Madras Regulation XXV, 1802.
	„	VII (cl. 1 of s. 3 only) . .	Native Officers in Revenue and other Public Departments.
	„	IX	Embezzlement by public servants and malversation in revenue-matters.
	1823,	III	
	1828,	VII	Powers of Subordinate and Assistant Collectors.
	1829,	V	Hindu Wills and Estates.
	1830,	I	Prohibition of Widow-burning.
	1831,	V (s. 7, cl. 2 only). . .	Liability of Ministerial Officers for reception of improperly stamped document.
	„	VI [5]	Hereditary Village Offices.
[6]	„	X	Prohibition of Sale of Estates of Minors for Arrears of Revenue.
[3]	1832,	III	Limitation for Suits against orders of Revenue Authorities under Madras Regulation VII of 1828.

[1] Act XV of 1874, so far as it relates to the portions of Madras Regulation V of 1804 which were repealed by the Guardians and Wards Act, 1890 (VIII of 1890), is repealed by the latter Act. Th Regulation was repealed by Madras Act I of 1902 (Madras Court of Wards Act).

[2] Parts of ss. 1 and 7 were originally referred to in this schedule. Of the entire Regulation only the second clause of s. 7 is now in force, *see* Pt. III of the Schedule to the Repealing Act, 1876 (XII of 1876).

[3] Printed, Madras Code.

[4] Madras Regulation XII of 1816 has been repealed by Madras Act IV of 1897 (the Madras Survey and Boundaries Act) so far as it applies to cases of claims to lands or crops, the validity of which claims may depend upon the determination of an uncertain and disputed boundary or land-mark.

[5] Repealed by Madras Act III of 1895 (Madras Hereditary Village Offices Act), Mad. Code. Act XV of 1874, so far as it relates to Madras Regulation X of 1831, s. 3, is repealed by the Guardians and Wards Act, 1890 (VIII of 1890). So much of the Regulation as is now in force is printed in the Madras Code.

(Second Schedule.—Enactments in force throughout the whole of the territories subject to the government of the Governor of Fort St. George in Council, except the Scheduled Districts.)

SECOND SCHEDULE—*concluded.*

(*b*).—ACTS OF THE SUPREME COUNCIL RELATING TO THE MADRAS PRESIDENCY.[1]

Year and Number.		Subject.
2	1837, XXXVI	Criminal Jurisdiction of Collectors.
	1839, VII	Tahsíldárs.
	1840, VIII	Awards of Panchâyats.
	1844, VI	Duties.
3	1846, I	Pleaders.
4	,, IX	*Habeas corpus.*
2	1849, X	Commissioners of Revenue.
3	1853, XX	Pleaders.
2	*1855, XXI*	*Minors.*
5	1856, *VIII*	*Control of Gaols.*
2	1857 VII	Uncovenanted Agency.
	1858, I	Compulsory Labour.
	1859, XXIV	Police.
	1860, XXVIII	Boundary Marks.

[1] Act XV of 1874 having been repealed, so far as it relates to the following enactments, by the Acts noted against each, the reference to those enactments have been omitted from this schedule :—

Enactments omitted.	Repealing Acts.
Act XII of 1838	Act VI of 1878.
,, XVII of 1840 }	
,, VII of 1852 }	,, XII of 1891.
,, X of 1855, s. 10	,, XI of 1901.
,, XIV of 1855	,, VIII of 1887.
,, XIV of 1858	,, VIII of 1890.
,, XI of 1869	,, XII of 1891.
,, XXIV of 1869	,, XVIII of 1877.

[2] Repealed by Mad. Act I of 1902 (Madras Court of Wards Act).

[3] As to the repeal of Acts I of 1846 and XX of 1853 in the Madras Presidency, *see* the Legal Practitioners Act, 1879 (XVIII of 1879), ss. 1 and 42, printed, General Acts, Vol. III. The Acts of 1846 and 1853 are printed in Vol. I of General Acts.

[4] Act IX of 1846 was repealed by Mad. Act I of 1893 (Repealing obsolete enactments).

[5] Act VIII of 1856 was repealed by the Prisons Act, 1894 (IX of 1894).

(Third Schedule.—Enactments in force throughout the whole of the territories subject to the Governor of Bombay in Council, except the Scheduled Districts.)

THIRD SCHEDULE.[1]

(See section 5.)

(*a*).—BOMBAY REGULATIONS.

	Year and Number.		Subject.
	1827,	II	Section 21 (caste questions); sections 47 to 54 (inclusive) and section 56 (pleaders).
	,,	IV	Section 262 (law applicable to suits); section 69,[3] clauses *second* and *third*[3] (attachment and distraint of crops).
	,,	V	Preamble: section 9 (acknowledgments of debt): section 14 (interest): section 15 (mortgages and pledges).
	,,	VIII	Administration of Estates.
2	,,	XII	Section 19 (Magistrate's power to make rules): section 20 (standards of weights and measures): section 27, clause 2 (supervision of suspected persons): section 37, clauses *first* and *second* (responsibility of villages for robberies).
	,,	XIII	Section 34, clause *third* (letter substituted for summons).
	,,	XXII	Sections 40, 41, 42, 43 (passage of troops).
3	,,	XXV	State Prisoners.
	1830	V	Section 1 (Revenue Commissioners): section 2, clauses 1, 2, 3 (Collectors and Sub-Collectors).
2	,,	XIII	Civil jurisdiction of Jagirdars.
	1831,	XV	Village Patels.
3	1832,	II	Realization of Revenue.
	1833,	V	Hereditary Officers.

[1] Act XV of 1874 having been repealed, so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from this schedule:—

Enactments omitted.	Repealing Acts.
Bom. Reg. XII of 1827, preamble . . .	Act XII of 1891.
,, ,, XVI of 1827	
,, ,, XXI of 1827, ss. 1-16, 46, 54-73 . .	
,, ,, XXII of 1827, ss. 18-20, 45-47 . .	,, XIII of 1889.

[2] Bom. Code.

[3] Bom. Reg. IV of 1827, s. 69, and Bom. Regs. V of 1830, XV of 1831, II of 1832 and V of 1833, are repealed locally by the Bombay Land-revenue Code, 1879 (Bom. Act V of 1879), Bom. Code.

(Third Schedule.—Enactments in force throughout the whole of the territories subject to the government of the Governor of Bombay in Council, except the Scheduled Districts.)

THIRD SCHEDULE—*concluded.*

(*b*).—Acts of the Supreme Council relating to the Bombay Presidency.[1]

Year and Number.	Subject.
[2] 1838, XVI	Judiciary.
[3] ,, XVIII	Sureties.
[2] 1838, XIX	Coasting Vessels.
[2] 1839, XX	Revenue.
[2] 1840, XV	Agents of Foreign Sovereigns.
[4] 1842, XIII	Revenue.
[4] ,, XVII	Revenue Commissioners.
[2] 1844, XIX	Abolition of Town Duties.
[5] 1846, I	Pleaders.
[4] ,, III	Sections 1, 5 and 6—Boundary Marks
[5] 1853, XX	Pleaders.

[1] Act XV of 1874 having been repealed, so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from this schedule :—

Enactments omitted.	Repealing Acts.
Act XI of 1843	Act XII of 1891.
,, III of 1852	
,, XXI of 1852	
,, X of 1855, s. 10	,, XI of 1901.
,, VIII of 1856	,, IX of 1894.
,, XX of 1864	,, VIII of 1890.

[2] Bom. Code.

[3] Act XVIII of 1838 is repealed locally by the Bombay Land-revenue Code, 1879 (Bom. Act V of 1879), Bombay Code.

[4] Acts III and XVII of 1842 and III of 1846 are repealed locally by the Bombay Land-revenue Code, 1879 (Bom. Act V of 1879).

[5] As to the repeal of Acts I of 1846 and XX of 1853 in the Bombay Presidency, *see* the Legal Practitioners Act, 1879 (XVIII of 1879), ss. 1 and 42, General Acts, Vol. III. The Acts of 1846 and 1853 are printed in Vol. I of the General Acts.

(*Fourth Schedule—Enactments in force throughout the whole of the territories subject to the government of the Lieutenant-Governor of Bengal, except the Scheduled Districts.*)

FOURTH SCHEDULE.[1]

(*See section 6.*)

(*a*).—BENGAL REGULATIONS (LOWER PROVINCES).

Year and Number.	Subject.
1793, I	Perpetual Settlement.
„ II	Collection of Land-revenue.
„ VIII	Rules for Decennial Settlement.
„ XI	Native laws of inheritance to Revenue-paying land.
„ XIX	Title to lands exempt from Revenue.
„ XXXVII	Title to lands exempt from Revenue under badshahi grants.
„ XXXVIII	Section 1—Preamble: Section 2—Prohibition of loans by Covenanted Servants.
1794, III	Sections 13, 16, 17, 18, 19 and 20—Arrears of Revenue.
1799, V	Wills and Intestacies of Natives.
1800, VIII	Pargana Register of Lands.
1801, I	Arrears of Revenue: Division of Joint Estates.
1804, X	Punishment by Courts-martial of certain State offences.
1806, XI	Passage of Troops.
1810, XIX	Maintenance of Bridges, etc.; Escheats.

[2]

[1] Act XV of 1874 having been repealed, so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from this schedule:—

Enactments omitted.	Repealing Acts.
Ben. Reg. XLVIII of 1793	Act XII of 1891.
„ „ III of 1794, s. 12	„ XII of 1876.
„ „ LVIII of 1795, ss. 3 & 4	„ XII of 1891.
„ „ XV of 1797	„ XIII of 1889.
„ „ I of 1798	„ XII of 1891.
„ „ XVII of 1806, ss. 7 & 8	„ VI of 1878.
„ „ XX of 1810	„ XII of 1891.
„ „ XI of 1811	„ X of 1882.
„ „ XIX of 1814	„ XII of 1876.
„ „ V of 1817	
„ „ XX of 1817, ss. 28 & 32	
„ „ VI of 1819	
„ „ XX of 1825	
„ „ IV of 1829	

[2] Ben. Code.

(*Fourth Schedule.—Enactments in force throughout the whole of the territories subject to the government of the Lieutenant-Governor of Bengal, except the Scheduled Districts.*)

FOURTH SCHEDULE—*continued.*

(*a*).—BENGAL REGULATIONS (LOWER PROVINCES)—*concluded.*

Year and Number.		Subject.
1812,	V	Collection of Land-revenue.
,,	XI	Removal of Foreign Emigrants.
1817,	XX	Section 29—Criminal process in Sait and Opium Departments: Section 30, clauses 1, 2 and 5—Building forts; Collecting sepoys and stores; Encroaching on roads.
1818,	III	State Prisoners.
1819,	II	Resumption of Revenue-free lands.
1821,	IV	Powers of Collectors and Magistrates.
1822,	III	Boards of Land-revenue.
,,	XI	Section 36—Khás management of purchases by Government: Section 38—non-liability of Government for errors of Courts.
1823,	VI	Indigo Contracts.
,,	VII	Prohibition of loans to Covenanted Civil Servants.
[1] 1825,	VI	Passage of Troops.
,,	IX	Defaulting malguzars.
,,	XI	Alluvion and Diluvion.
,,	XIII	Settlement of resumed Lákhiráj land.
,,	XIV	Authority to confirm Lákhiráj tenures: Native grants.
1827,	III	Section 5—Evidence.
,,	V	Management of Estates under attachment.
1828,	III	Appeals from decisions of Revenue Authorities.
,,	IV	Section 1 and section 2, clause 4—Time during which Collectors are to be considered engaged in making settlements.
1829,	I	Commissioners of Revenue and Board of Revenue.
,,	XVII	Widow-burning.
1830	V	Sections 1 and 5—Indigo Contracts.

[1] Ben. Code.

(*Fourth Schedule.—Enactments in force throughout the whole of the territories subject to the government of the Lieutenant-Governor of Bengal, except the Scheduled Districts.*)

FOURTH SCHEDULE—*concluded.*

(*b*).—ACTS OF THE SUPREME COUNCIL RELATING TO THE LOWER PROVINCES.[1]

	Year and Number.	Subject.
	1836, X	Indigo Contracts.
	,, XXI	Creating Zilas.
2	1841, XII	Section 2—No Interest on arrears of Land-revenue.
	1847, IX	Assessment of new lands.
	1848 XX	Land-revenue.
	1850, XLIV	Board of Revenue.
3	1855, XXXII	Embankments.
	1856, XII	Civil Court Amins.
2	1857, XIII	Opium.
	1858, XXXI	Settlement of Alluvion.
	1859, XI	Sales for Arrears of Revenue.

[1] Act XV of 1874 having been repealed, so far as it relates to the following enactments by the Acts noted against each, the references to those enactments have been omitted from this schedule :—

Enactments omitted.	Repealing Acts.
Act XX of 1836	Act XII of 1891.
,, XI of 1838	
,, XIX of 1853, s. 26	,, I of 1903.
,, XX of 1856	,, XII of 1891.
,, XXI of 1856	
,, XL of 1858	,, VIII of 1890.
,, XXIII of 1860	,, XII of 1891.

[2] Ben. Code.

[3] Act XXXII of 1855 has been repealed locally in Bengal by the Bengal Embankments Act, 1873 (Bengal Act VI of 1873). *See* Ben. Code.

(Fifth Schedule.—Enactments in force throughout the whole of the territories subject to the Lieutenant-Governor of the North-Western Provinces, except the Scheduled Districts.)

FIFTH SCHEDULE.

(See section 7.)

(*a*).—BENGAL REGULATIONS (NORTH-WESTERN PROVINCES).[1]

Year and Number.	Subject.
1793, XXXVIII	Section 1—preamble: Section 2—prohibition of loans by Covenanted Servants.
1799, V	Wills and Administration to Natives.
1804, X	Punishment by Courts-martial of certain State Offences.
1806, XI	Passage of Troops.
1812, XI	Removal of Foreign Emigrants.
1818, III	State Prisoners.
1822, XI	Section 38—Non-liability of Government for errors of Courts.
2 1823, VI	Indigo Contracts.
2 „ VII	Prohibition of loans to Covenanted Civil Servants.
1825, VI	Passage of Troops.
„ XI	Alluvion and Dereliction.
1827, III	Section 5—Evidence.
„ V	Management of Estates under Attachment.
1829, XVII	Widow-burning.
1830, V	Sections 1 and 5—Indigo Contracts.
1831, XI	Sections 1, 2, 5, 6—Police-powers of Tahsíldárs.
1833, IX	Deputy Collectors.

[1] Act XV of 1874 having been repealed, so far as it relates to the following enactments, by the Acts noted against each, the references to those enactments have been omitted from this schedule:—

Enactments omitted.	Repealing Acts.
Ben. Reg. I of 1798	Act XII of 1891
„ „ XVII of 1806, ss. 7 & 8	Act XII of 1891
„ „ XIX of 1810	Act XII of 1891
„ „ XX of 1810	„ XIII of 1889.
„ „ V of 1817	„ XII of 1891.
„ „ VI of 1819	„ XII of 1891.
„ „ XX of 1825	„ X of 1882.
„ „ VI of 1831, s. 6	„ XII of 1891.
„ „ XI of 1831, ss 4 & 8	„ XII of 1891.
„ „ I of 1833	„ VIII of 1875.

[2] U. P. Code

(Fifth Schedule.—Enactments in force throughout the whole of the territories subject to the Lieutenant-Governor of the North-Western Provinces, except the Scheduled Districts.)

FIFTH SCHEDULE—*concluded.*

(*b*).—ACTS OF THE SUPREME COUNCIL RELATING TO THE NORTH-WESTERN PROVINCES.[1]

Year and Number.	Subject.
[2] 1836, X	Indigo Contracts.
[2] 1854, XVI	Police.
[2] 1856, XII	Civil Court Amins
[3] ,, XX	Chaukidars.
[2] 1857 XIII	Opium.

[1] Act XV of 1874 having been repealed, so far as it relates to the following enactments by the Acts noted against each, the references to those enactments have been omitted from this schedule.

Enactments omitted.	Repealing Acts.
Act XXI of 1836	Act I of 1903.
,, XIX of 1853, s. 26	Act I of 1903.
,, XL of 1858	,, VIII of 1890.

[2] U. P. Code.

[3] U. P. Code; as to the repeal of this Act in municipalities, *see* Act XV of 1883, s. 17, repealed by the North-Western Provinces and Oudh Act I of 1900.

SIXTH SCHEDULE.

(*See sections 2, 3, 4, 5, 6 and 7.*)

PART I.

SCHEDULED DISTRICTS, MADRAS.

I.—In Ganjám.

(1) The Gumsur Maliahs, including Chokapad.
(2) The Surada Maliahs.
(3) The Chinna Kimedi Maliahs.
(4) The Pedda Kimedi Maliahs.
(5) The Bodaguda Maliahs.
(6) The Suranji Maliahs.
(7) The Parla Kimedi Maliahs.
(8) The Muttás of Koradá and Ronaba (otherwise called Srikarma).
[(9) *The Chighatti Maliah.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*
(10) The Juradá Maliah.
(11) The Jalantra Maliah.
(12) The Mandasa Maliah.
(13) The Budarashinghi Maliah.
(14) The Kuttingia Maliah.

II.—In Vizagapatam.

(1) The Jeypur Zamíndárí.
(2) Golconda Hills, west of the River Boderu [1]
(3) The Madugol Maliahs.
(4) The Kasipur Zamíndárí.
(5) The Panchipenta Maliahs.
(6) Mondemkolla, in the Merangi Zamíndárí.
[2][(7) The Konda Muttá of Merangi.]
(8) The Gumma and Konda Muttás of Kurpam.
(9) The Kottam, Rám and Konda Muttás of Pálkonda.

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1 The Ducharti and Guditeru Muttás in the Golconda Hills have been transferred from the Vizagapatam to the Godávari District. *See* Fort St. George Gazette, 1881, Pt. I, p. 336.

Certain villages and estates in the Godávari District have become Scheduled Districts for the purposes of the Scheduled Districts Act, 1874, *see* Appendix B to that Act, printed, *supra*; but they are not "scheduled districts" within the meaning of the Laws Local Extent Act, 1874.

2 This clause was substituted for the original clause (7) by the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol. IV. The original clause ran—"The Konda Muttá of Belgám."

SIXTH SCHEDULE—*continued.*

PART I—*concluded.*

SCHEDULED DISTRICTS, MADRAS—*concluded.*

III.—In the Godávari District.[1]

(1) The Bhadráchalam Táluq.
(2) The Rakapilli Táluq.
(3) The Rampá Country.

IV.—In the Indian Ocean.

The Laccadive Islands, including Minicoy.

PART II.

SCHEDULED DISTRICTS, BOMBAY.

I.—The Province of Sindh.

II.—[*The Panch Mahâls.*] *Rep. by the Panch Mahâls Laws Act, 1885 (VII of 1885), with effect from the 1st May 1895.*

III.—Aden.[2]

IV.—The villages belonging to the following Mehwassi Chiefs :—

(1) The Párví of Káthí.
(2) The Párví of Nál.
(3) The Párví of Singpúr.
(4) Walwi of Gaohállí.
(5) The Wassáwa of Chikhlí.
(6) The Párví of Nawalpúr.

PART III.

SCHEDULED DISTRICTS, BENGAL.

I.—The Jalpáiguri and Darjeeling Districts.[3]

II.—The Hill Tracts of Chittagong.

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[1] *See* first footnote on preceding page.

[2] "In all enactments and rules heretofore or hereafter passed and made by the Governor General in Council or the Governor of Bombay in Council, the word 'Aden' shall, unless there is something repugnant in the subject or contest, or the word is used with reference to Her Majesty's Vice-Admiralty Court at Aden, be construed to mean the Settlement of Aden and such of its dependencies for the time being, inclusive of the villages of Shaikh Othman, Imad and Hiswa, the Island of Perim and Little Aden, as are administered by the Governor of Bombay in Council," *see* the Aden Laws Regulation, 1891 (II of 1891), s. 2, Bom. Code.

[3] "Districts" was substituted for "Divisions" by the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol. IV.

(*Sixth Schedule.—Scheduled Districts.*)

SIXTH SCHEDULE—*continued.*

PART III—*concluded.*

SCHEDULED DISTRICTS, BENGAL—*concluded.*

III.—The Santhál Parganas.

IV.—The Chutiá Nágpur Division.[1]

V.—The Mahâls of Angul and Banki.[2]

PART IV.

SCHEDULED DISTRICTS, NORTH-WESTERN PROVINCES.

I.—[*The Jhánsi Division, comprising the Districts of Jhánsí, Jalaun and Lalatpur.*] *Rep. by the North-Western Provinces and Oudh Act, 1890 (XX of 1890), section 8 (1), with effect from the 1st April 1891.*

II.—The Province of Kumáon and Garhwál.

III.—The Tarái Parganas, comprising—Bázpúr, Kashípúr, Jaspúr, Rudarpúr, Gadarpúr, Kilpúri, Nának-Matthá and Bilherí.

IV.—In the Mirzápur District—

(1) The tappás of Agori Khás and South Kon in the Pargana of Agori.

(2) The tappá of British Singrauli in the Pargana of Singrauli.

(3) The tappás of Phulwá, Dudhi and Barhá in the Pargana of Bichipár.

(4) The portion lying to the South of the Kaimor Range.

[V.—*The family Domains of the Maháraját of Benares, comprising the following parganas:—Bhadohi and Kheyra Mángror in the Mirzápur District; Kaswá Rajá in the Benares District.*] *Rep. by the Benares Family Domains Act, 1881 (XIV of 1881), s. 14, with effect from the 24th September 1881.*

VI.—The tract of country known as Jaunsar Báwar in the Dehrá Dún District.

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[1] The Thanas of *Raipur and Khattra*, which formerly formed portion of the Chutiá Nágpur Division, have been transferred to the District of Bankura, and ceased to be a Scheduled District on the 1st October 1879. *See* the Raipur and Khattra Laws Act, 1879 (XIX of 1879), Ben. Code.

The ESTATE OF PORAHÁT now forms part of the Chutiá Nágpur Division Scheduled District for the purposes of the Scheduled Districts Act, 1874, *see* the Porahát Estate Act, 1893 (II of 1893), s. 3, Ben. Code; but it is not a "scheduled district" within the meaning of the Laws Local Extent Act, 1874.

[2] The Mahâl of Banki ceased to be a Scheduled District on the 1st April, 1882, *see* the Banki Laws Act, 1881 (XXV of 1881), Ben. Code; and that Act declared that all enactments then in force in Cuttack, but not in Banki, should forthwith be in force in Banki, and that all enactments then in force in Banki, but not in Cuttack, should thereupon be deemed to have been repealed as regards Banki.

The KHONDMALS in Orissa, which now form part of the Angul District, *see* the Angul District Regulation, 1894 (I of 1894), s. 2, Ben. Code, have become a Scheduled District for the purposes of the Scheduled Districts Act, 1874 (XIV of 1874), *see* Appendix B to that Act, printed, *supra*; but they are not "scheduled districts" within the meaning of the Laws Local Extent Act, 1874.

SIXTH SCHEDULE—*continued.*

PART V.

SCHEDULED DISTRICTS, PUNJAB.

The Districts of [1] Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán, Dera Gházi Khán, Lahaul and Spiti.

PART VI.

SCHEDULED DISTRICTS, CENTRAL PROVINCES.

Chattisgarh Zamíndáris.

1. Khariár.
2. Bindrá Nawagarh.
3. Sahezpur.
4. Gándai.
5. Silhetí.
6. Barbaspúr.
7. Thákurtolá.
8. Lohárá.
9. Gondardehí.
10. Fingeswar.
11. Pándariá.
12. Pendrá.
13. Mátín.
14. Uprorá.
15. Kendá.
16. Láphá.
17. Chhúrí.
18. Korbá.
19. Chapá.
20. Borá Sámbhar.
21. Phúljhar.
22. Kotábirá.
23. Rámpur.

Chanda Zamíndáris.

1. Ahírí.
2. Ambágarh Chaukí.
3. Aundhí.
4. Dhanorá.
5. Dudhmálá.
6. Gewardá.
7. Jhárápáprá.
8. Khutgáon.
9. Korachá.
10. Kotgal.
11. Muramgáon.
12. Pánábáras.
13. Palasgarh.
14. Rángí.
15. Sirsundí.
16. Sonsarí.
17. Chándálá.
18. Gilgáon.
19. Páwí Mutánda.
20. Pategáon.

Chhindwárá Jágirdáris.

1. Haraí.
2. Chháter.
3. Gorakhghát.
4. Gorpání.
5. Baktagarh.
6. Bardágarh.
7. Pachmarhí.
8. Partábgarh.
9. Almod.
10. Sonpur.
11. Bariám Pagárá.

PART VII.

The Chief Commissionership of Coorg.

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[1] Portions of the districts of Hazára, Bannu and Dera Ismail Khán and the districts of Pesháwar and Kohát now form the N.-W. Frontier Province, *see* Gazette of India, 1901. Pt. I, p. 857.

SIXTH SCHEDULE—*concluded.*

PART VIII.

The Chief Commissionership of the Andaman and Nicobar Islands.[1]

PART IX.

The Chief Commissionership of Ajmere and Merwára.

PART X.

The Chief Commissionership of Assam.[2]

PART XI.

The Hill Tracts of Arakan.[3]

LIBRARY OF THE BOMBAY BRANCH OF THE ROYAL ASIATIC SOCIETY

PART XII.

The Pargana of Mánpur.

PART XIII. [*The Cantonment of Morar.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

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[1] The Little Cocos Island has been transferred to the administration of the Chief Commissioner of Burma and ceased to be a Scheduled District on the 29th November 1882, *see* the Little Cocos and Preparis Islands Laws Act, 1883 (VIII of 1883), Bur. Code.

[2] The Lushái Hills, which include the North and South Lushái Hills and the Mokokchang Sub-division of the Nagá Hills District, have now become Scheduled Districts for the purposes of the Scheduled Districts Act, 1874 (XIV of 1874), *see* Appendix B to that Act, *supra*, but they are not Scheduled Districts within the meaning of the Laws Local Extent Act, 1874.

[3] UPPER BURMA (with the exception of the Shan States) has become a Scheduled District for the purposes of the Scheduled Districts Act, 1874 (XIV of 1874), *see* Appendix B to that Act, *supra*; but it is not a "scheduled district" within the meaning of the Laws Local Extent Act, 1874.

Under the operation of the Burma Laws Act, 1898 (XIII of 1898), s. 14, Bur. Code, portions of Lower Burma may become Scheduled Districts for the purposes of the Scheduled Districts Act, 1874 (XIV of 1874).

The Chief Commissionership of BRITISH BALUCHISTAN has become a Scheduled District for the purposes of the Scheduled Districts Act, 1874, *see* Appendix B to that Act, *supra*; but it is not a "scheduled district" within the meaning of the Laws Local Extent Act, 1874.

ACT No. V OF 1875.[1]

[*9th February 1875.*]

An Act to remove doubts as to the rights and liabilities of certain Native Soldiers.

Preamble.

WHEREAS doubts have arisen as to the rights and liabilities of certain Native Soldiers who have been enrolled without having been attested, and it is expedient to remove such doubts; It is hereby enacted as follows:—

Validation of enlistment of certain Native soldiers.

1. Every person who has for the space of six months been in the receipt of military pay and been borne on the rolls of any Regiment, Corps, Depôt, Ordnance Establishment, or Department of Her Majesty's Indian Army (of which the last pay-statement, if produced, shall be evidence), shall be deemed to have been duly enlisted, enrolled and attested, and shall not be entitled to claim his discharge on the ground of illegality or irregularity in his enlistment, enrolment or attestation, or on any other grounds save such as may be recognised by the orders and customs of the service.

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1 Short title, The Unattested Sepoys Act, 1875. *See* the Short Titles Act, 1897 (XIV of 1897), General Acts, Vol. IV.

For the Statement of Objects and Reasons, *see* Gazette of India, 1874, Pt. V, p. 284; for Proceedings in Council, *see ibid*, Supplement, pp. 1984 and 1988, and *ibid*, 1875, Supplement, p. 215.

This Act is framed on the model of s. 59 of the Mutiny Act, 1878 (41 & 42 Vict., c. 10), *see* now s. 100 (*l*) of the Army Act (44 & 45 Vict., c. 58), Coll. Stat., Vol. II.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), *supra*, to be in force in the following Scheduled Districts, namely:—

The Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum, *see* Gazette of India, 1881, Pt. I, p. 504. The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894, Lohárdaga is now called the Ranchi District; Cal. Gazette, 1899, Pt. I, p. 44.

It has been declared in force in—

Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (*l*) and Sch. I. Bur. Code;

British Baluchistan by the British Baluchistan Laws Regulation, 1890 (1 of 1890), s. 3, Bal. Code;

the Arakan Hill Districts by the Arakan Hill District Laws Regulation, 1874 (IX of 1874), s. 3, as amended by the Burma Laws Act, 1898 (XIII of 1898), Sch. III, Pt. II, Bur. Code.

It has been applied to the Shan States by the Shan States Laws and Criminal Justice Order, 1895, *see* Burma Gazette, 1895, Pt. I, p. 262.

ACT No. IX OF 1875.[1]

[*2nd March 1875.*]

An Act to amend the Law respecting the age of majority.

Preamble.

WHEREAS, in the case of persons domiciled in British India, it is expedient to prolong the period of nonage, and to attain more uniformity and certainty respecting the age of majority than now exists; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Indian Majority Act, 1875.

Local extent.

It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty;

Commencement and operation.

and it shall come into force and have effect only on the expiration of three months from the passing thereof.

Savings.

2. Nothing herein contained shall affect—

(*a*) the capacity of any person to act in the following matters (namely),—marriage, dower, divorce and adoption;

(*b*) the religion or religious rites and usages of any class of Her Majesty's subjects in India; or

(*c*) the capacity of any person who before this Act comes into force has attained majority under the law applicable to him.

Age of majority of persons domiciled in British India.

3. Subject as aforesaid, [every minor of whose person or property or both a guardian, other than a guardian for a suit within the meaning of Chapter XXXI of the Code of Civil Procedure, has been or shall be appointed or

XIV of 1882.

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[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1874, Pt. V, p. 153; for Proceedings in Council, *see ibid*, Supplement, p. 668, and Extra Supplement, dated 12th May, 1874, p. 4, and *ibid*, 1875, Supplement, p. 333.

This Act has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), *supra*, to be in force in the following Scheduled Districts, namely:—

The Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum. [The Lohárdaga District included at this time the present District of Palamau, which was separated in 1894. Lohárdaga is now called the Ranchi District; Calcutta Gazette, 1899, Pt., I, p. 44]	*See* Gazette of India, 1881, Pt. I, p. 504.
The North-Western Provinces Tarái	Ditto, 1876, Pt. I, p. 505.

It has been extended, by notification under s. 5 of the same Act, to British Baluchistan, *see* Gazette of India, 1897, Pt. II, p. 60.

It has been declared in force in—

Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), s. 4(1) and Sch. I, Bur. Code;

the Arakan Hill District by the Arakan Hill District Laws Regulation, 1874 (IX of 1874), s. 3, as amended by the Burma Laws Act, 1898 (XIII of 1898), Sch. III, Pt. II, Bur. Code.

It has been applied to the Baluchistan Agency Territories, *see* Gazette of India, 1897, Pt. I, p. 27.

declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age][1] shall, notwithstanding anything contained in the Indian Succession Act (No. X of 1865)[2] or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before.

Subject as aforesaid, every other person domiciled in British India shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before.

Age of majority how computed.

4. In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of section 3, at the beginning of the twenty-first anniversary of that day, and if he falls within the second paragraph of section 3, at the beginning of the eighteenth anniversary of that day.

Illustrations.

(*a*) Z is born in British India on the first day of January 1850, and has a British Indian domicile. A guardian of his person is appointed by a Court of Justice. Z attains majority at the first moment of the first day of January 1871.

(*b*) Z is born in British India on the twenty-ninth day of February 1852, and has a British Indian domicile. A guardian of his property is appointed by a Court of Justice. Z attains majority at the first moment of the twenty-eighth day of February 1873.

(*c*) Z is born on the first day of January 1850. He acquires a domicile in British India. No guardian is appointed of his person or property by any Court of Justice, nor is he under the jurisdiction of any Court of Wards. Z attains majority at the first moment of the first day of January 1868.

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1 These words were substituted for the words "every minor of whose person or property a guardian has been or shall be appointed by any Court of Justice, and every minor under the jurisdiction of any Court of Wards" by the Guardian and Wards Act, 1890 (VIII of 1890), s. 52, General Acts, Vol. IV. For the Code of Civil Procedure *see* now Act V of 1908, General Acts, Vol. VI.

2 General Acts, Vol. I.

ACT No. XIII OF 1875,[1]

[*15th March 1875.*]

An Act to amend the law relating to Probates and Letters of Administration.

X of 1865. WHEREAS, under the Indian Succession Act, 1865,[2] the effect of an unlimited grant of probate or letters of administration made by any Court in British India is confined to the province in which such grant is made; And whereas it is expedient to extend over British India the effect of such grants when made by a High Court; And whereas it is also expedient to amend the VII of 1870. Court-fees Act, 1870,[3] as to probates, letters of administration and certificates of administration; It is hereby enacted as follows:— Preamble.

1. [*Addition to Act X of 1865, section 3.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

[*Sections 2, 3, 4, and 5 were repealed by the Probate and Administration Act, 1903 (VIII of 1903), s. 4, General Acts, Vol. V.*]

VII of 1870. 6.[4] After section 19 of the Court-fees Act, 1870,[2] the following chapter shall be inserted (namely) :— Addition to Act VII of 1870.

"CHAPTER IIIA. [*See Act VII of 1870 supra.*]

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1 Short title, The Probate and Administration Act, 1875. *See* the Indian Short Titles Act, 1897 (XIV of 1897), General Acts, Vol. IV.

For the Statement of Objects and Reasons, *see* Gazette of India, 1874, Pt. V, p. 246; for the Further Report of the Select Committee, *see ibid*, 1875, Pt. V, p. 43; for Proceedings in Council, *see ibid*, 1874, Supplement, pp. 1871 and 1981, and *ibid*, 1875, Supplement, p. 435.

This Act has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), *supra*, to be in force in the following Scheduled Districts, namely :—

The Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum. [The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894; Lohárdaga is now called the Ranchi District, Calcutta Gazette, 1899, Pt. I, pp. 44]	*See* Gazette of India, 1881, Pt. I, p. 504.
The North-Western Provinces Tarái . .	Ditto. 1876, Pt. I, p. 505.

It has been declared in force in—

Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (1) and Sch. I, Bur. Code;

the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872), as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (III of 1899).

2 General Acts, Vol. I.

3 *Supra.*

4 So much of this section as directs the insertion of s. 19H in the Court-fees Act, 1870 (VII of 1870), has been repealed by the Repealing and Amending Act, 1891 (XII of 1891).

ACT No. XVIII OF 1875.[1]

[*13th October 1875.*]

An Act for the improvement of Law Reports.

WHEREAS it is expedient to diminish the multitude and expense of the Law Reports published in British India, and to improve their quality; And whereas, with a view to furthering these objects, the Governor General in Council proposes to authorize the publication of reports of cases decided by the High Courts of Judicature established under the twenty-fourth and twenty-fifth of Victoria, chapter 104; [2]It is hereby enacted as follows :—

Short title.

1. This Act may be called the Indian Law Reports Act, 1875.

Local extent.

It extends to the whole of British India;

Commencement.

and it shall come into force on such day as the Governor General in Council notifies in this behalf in the Gazette of India[3].

2. [*Repeal of Act II of 1875.*] *Rep. by the Repealing Act, 1876 (XII of 1876.)*

Authority given only to authorized reports.

3. No Court shall be bound to hear cited, or shall receive or treat as an authority binding on it, the report of any case decided by any of the said High Courts on or after the said day, other than a report published under the authority of the Governor General in Council.

Authority of judicial decisions.

4. Nothing herein contained shall be construed to give to any judicial decision any further or other authority than it would have had if this Act had not been passed.

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[1]For the Statement of Objects and Reasons, *see* Gazette of India, 1875, Pt. V, p. 139; for Proceedings in Council, *see ibid*, Extra Supplement, dated 31st July 1875, p. 5, and *ibid*, Extraordinary, dated 25th October 1875, p. 1.

This Act has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), *supra*, to be in force in the following Scheduled Districts, namely :—

The Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum. [The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894; Lohárdaga is now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44.] *See* Gazette of India, 1881, Pt. I, p. 504.

[2] The Indian High Courts Act, printed, Coll. Stat., Vol. I.

[3] Came into force on the 1st January 1876, *see* Gazette of India, 1875, Pt. I, p. 589.

ACT No. VII OF 1876.[1]

[*21st March 1876.*]

An Act to extend the Criminal Tribes Act, 1871, to the Lower Provinces of Bengal and to amend the same Act.

Preamble.

WHEREAS it is expedient to extend [2]Act No. XXVII of 1871 (*for the Registration of Criminal Tribes and Eunuchs*) to the Lower Provinces of Bengal and to amend the same Act in manner hereinafter appearing; It is hereby enacted as follows:—

Extension of Act XXVII of 1871, section 1, to Lower Provinces.

1. Section 1 of the said Act shall be read as if, after the words "Lieutenant-Governors of," the following word were inserted (namely), "Bengal."

Amendment of section 18, Act XXVII of 1871.

2. Section 18 of the said Act shall be read as if in the second clause, after the words "persons reside," the following words were inserted (namely) "or the agents of such landowners or occupiers."

Amendment of section 21, Act XXVII of 1871.

Section 21 of the said Act shall be read as if in the first clause, after the words "persons reside," the following words were inserted (namely), "or of the agent of any such owner or occupier,"

and as if in the fourth clause, after the words "occupier of land," the following words were inserted (namely), "or of the agent of such owner or occupier."

Amendment of section 22, Act XXVII of 1871.

And section 22 of the same Act shall be read as if, after the words "occupier of land," the following words were inserted (namely), "or the agent of such owner or occupier."

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1 Short title, The Criminal Tribes (Amendment) Act, 1876. *See* the Repealing and Amending Act, 1903 (I of 1903), General Acts, Vol. V.

For Statement of Objects and Reasons, *see* Gazette of India, 1876, Pt. V, p. 226; for Proceedings in Council, *see ibid*, Supplement, 1876, pp. 191, 222, 289, 322 and 342.

2 *Supra.*

ACT No. IX OF 1876.[1]

[*28th March 1876.*]

An Act to enable the Government of India to declare certain coins of Native States to be a legal tender in British India.

Preamble. WHEREAS it is expedient to enable the Governor General in Council to declare that a tender of payment of money, if made in certain coins made for or issued by Native States, shall be a legal tender in British India; It is hereby enacted as follows:—

Short title. 1. This Act may be called the Native Coinage Act, 1876.

Local extent. It extends to the whole of British India;

Commencement. and it shall come into force at once.

Interpretation-clause. 2 In this Act "Native State" means any State in India which is under the protection or political control of Her Majesty, or of which the Government shall have acknowledged the supremacy of the British Crown.

Power to declare that the coins of a Native State shall be legal tender. 3. Subject to the provisions of section 4, the Governor General in Council may, from time to time, by notification in the Gazette of India, declare that a tender of payment of money, if made in the coins, or the coins of any specified metal, made under this Act, for any Native State, shall be a legal tender in British India;[2]

and the provisions of the Indian Coinage Act, 1870,[3] shall apply to the coins to which such notification refers, so far as such provisions are applicable thereto, and save as expressly provided by such notification. XXIII of 1870.

When such power may be exercised. 4. The power conferred by the first clause of section 3 shall be exercisable only when the coins referred to in such notification comply with the following conditions (that is to say)—

in the case of coins of gold, silver or bronze,

(*a*) their fineness is identical with that for the time being prescribed by law for coins of the Government of India of the same metal;

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1 For the Statement of Objects and Reasons, *see* Gazette of India, 1876, Pt. V, p. 36; for Proceedings in Council, *see ibid*, Supplement, pp. 178, 192 and 405.

This Act has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), *supra*, to be in force in the following Scheduled Districts, namely:—

The Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum. [The District of Lohárdaga included at this time the present District of Pálamau, which was separated in 1894; Lohárdaga is now called the Ranchi District, Calcutta Gazette, 1899, Pt. I, p. 44.] *See* Gazette of India, 1881, Pt. I, p. 504.

2 For notifications issued under this section in respect of certain coins of—

(1) the Alwar State, *see* Gazette of India, 1877, Pt. I, p. 644;

(2) the Bikanir State, *see* Gazette of India, 1893, Pt. I, pp. 213, 428 and 517, and *ibid*, 1894, Pt. I, p. 187;

(3) the Dhar State, *see* Gazette of India, 1888, Pt. I, p. 18.

As to Bhopal coinage, *see* the Bhopal Coinage Act, 1897 (XI of 1897), *Rep.* Act I of 1903.

3 *See* now the Indian Coinage Act, 1906 (III of 1906), General Acts, Vol. VI.

in the case of coins whether of gold, silver, bronze or copper,

(*b*) they are identical in weight with some coins of the Government of India of the same metal, which may for the time being be legally coined at any Mint of the Government of India, or bear such relation thereto as is approved by the Governor General in Council;

(*c*) the devices upon their obverse and reverse differ from the devices on coins now made or issued by any such Native State, and have been approved by the Governor General in Council;

(*d*) upon each of such coins its value in money of the Government of India is inscribed in the English language;

(*e*) the Native State for which they are coined has undertaken to abstain during a term of not less than thirty years from the date of the notification, from coining in its own Mint gold, silver, bronze or copper, as the case may be, and has also undertaken that no coins resembling coins for the time being a legal tender in British India shall, after the expiration of the said term, be struck under its authority or with its permission at any place within or without its jurisdiction;

(*f*) such State has formerly declared that a tender of payment of money, if made in coins of the Government of India of the same metal, shall, in the territories subject to such State, be a legal tender in the cases in which payment made in such coins would, under the law for the time being in force, be a legal tender in British India;

(*g*) such State has also agreed that the law and rules for the time being in force respecting the cutting and breaking of coin of the Government of India reduced in weight by reasonable wearing or otherwise, or counterfeit, or called in by proclamation, shall apply to the coins made for such State under this Act, and that it will defray the cost of cutting and breaking them; and

(*h*) such State has also agreed not to issue the same coins below their nominal value, and not to allow any discount or other advantage to any person in order to bring them into circulation.

Native States authorized to send metal to British India Mint for coinage.

5. It shall be lawful for any such State to send to any Mint in British India metal to be made into coin under this Act; and, subject to the Mint rules for the time being in force, and to the provisions hereinafter contained, the Mint-master shall receive such metal and convert it into coin, provided that it be fit for coinage.

Nothing herein contained shall be deemed to entitle any such State to have coins made under this Act at any Mint of the Government of India of any metal which is not for the time being legally coined at such Mint.

Power to impose a charge for coinage.

The Governor General in Council may impose on any metal sent to a Mint for coinage under this Act the duty (if any) leviable on the same metal

under the Indian Coinage Act, 1870,[1] and also a charge sufficient to defray the expenses of coinage over and above the expenses of assay and refining; and the Mint-master shall coin such metal at the charge so imposed. XXIII of 1870.

Power to limit number of coins to be made under this Act for any Native State.

7. The Governor General in Council may, from time to time, with reference to the reasonable requirements of the population of any Native State, fix the maximum number of any coins of any particular metal that shall be coined under this Act.

THE PRESIDENCY BANKS ACT, 1876.

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[1] *See* now the Indian Coinage Act, 1906 (III of 1906), General Acts, Vol. VI.

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ACT No. XI OF 1876.[1]

[*11th April 1876.*]

An Act for constituting and regulating the Banks of Bengal, Madras and Bombay.

Preamble.

WHEREAS the Bank of Bengal is now constituted and regulated by Act No. IV of 1862[2] as amended by Acts No. VI of 1862[2] and No. XIX of 1870,[2]

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1875, Pt. V, p. 289; for Report of Select Committee, *see ibid*, 1876, Pt. V, p. 328; and for Proceedings in Council, *see ibid*, Supplement, pp. 1030 & 1057; and *ibid*, 1876, Supplement, pp. 331 and 535.

This Act has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), General Acts, Vol. II, to be in force in the following Scheduled Districts, namely:—

The Districts of Hazáribágh, Lohárdaga (now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44, and it then included the present District of Palamau, which was separated in 1894) and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum, *see* Gazette of India, 1881, Pt. I, p. 504.

It has been declared in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (*l*) & Sch. I, Bur. Code.

[2] Repealed by this Act, s. 2 & Sch.

and its capital consists of twenty-two millions of rupees, in shares of one thousand rupees each ;

And whereas the Bank of Madras is now constituted and regulated by Madras Act No. VI of 1866,[1] as amended by Madras Act No. I of 1871,[1] and its capital consists of five millions six hundred and twenty-five thousand rupees, in shares of one thousand rupees each ;

And whereas a Bank named the Bank of Bombay was constituted and regulated by Bombay Act No. X of 1863,[1] as amended by Bombay Acts No. XV of 1866[1] and No. I of 1867[1] ; but such Bank has been wound up and the said Bombay Acts are now obsolete and should be expressly repealed ;

And whereas on the tenth day of December 1867, a joint-stock Banking Company was registered and incorporated at Bombay, by virtue of the Indian
X of 1866. Companies Act, 1866,[2] under the name of "The New Bank of Bombay, Limited," with a Memorandum of Association and Articles of Association then also registered, and prescribing the constitution and regulations for the management of such Bank ;

And whereas the Government of India now holds two thousand two hundred shares in the said Bank of Bengal, and five hundred and sixty-two and a half shares in the said Bank of Madras ; and, under the provisions of the said Act No. IV of 1862 [1] and Madras Act No. VI of 1866,[1] is bound to appoint, and has power to remove, certain of the directors of the said Banks of Bengal and Madras respectively, and has also power to give a proxy to any person whom the Governor General in Council may appoint, to attend and vote at any meeting of the proprietors of each of the same Banks ;

And whereas the Government of India has determined to sell its said shares and to surrender its said powers ; and it is expedient to relieve the said Government from the said duty of appointing directors, and to repeal the said enactments and to consolidate such of them as relate to the said Banks of Bengal and Madras respectively with the changes rendered necessary or desirable by such sale, surrender and relief ;

And whereas it is expedient to reduce the said capital of the Bank of Bengal by two millions of rupees and to reduce the said capital of the Bank of Madras by six hundred and twenty-five thousand rupees, and to divide the capital so reduced of each of the same Banks into shares of five hundred rupees each ;

And whereas it is expedient that the said New Bank of Bombay, Limited, should be reconstituted and regulated, in manner in this Act provided, under the name of the Bank of Bombay ;

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1 Repealed by this Act, s. 2 & Sch.
2 *See* now the Indian Companies Act, 1882 (VI of 1882), General Acts, Vol. III.

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title. **1.** This Act may be called the Presidency Banks Act, 1876;

Commencement. and it shall come into force on the first day of May, 1876.

Repeal of enactments. **2.** On and from that day the Statute specified in the first part of the schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof, and the Acts specified in the second, third and fourth parts of the same schedule shall be wholly repealed. But all bye-laws and regulations made under any such Act, and then in force, shall, so far as they are consistent with this Act, be deemed to have been made hereunder.

References in Act X of 1866. The references made in the Indian Companies Act, 1866,[1] to the Bank of Bengal, the Bank of Madras and the Bank of Bombay, shall be deemed to be made respectively to the Bank of Bengal, the Bank of Madras and the Bank of Bombay as constituted by this Act. X of 1866.

Interpretation-clause. **3.** In this Act, unless there be something repugnant in the subject or context,—

"The Bank." "the Bank" means the Bank of Bengal, the Bank of Madras, or the Bank of Bombay (as the case may be), as constituted and regulated by this Act:

"Capital." "capital" means the capital for the time being of the Bank:

"Shares." "shares" means the shares for the time being of the capital, and includes also half shares:

"Capital stock." "capital stock" means that part of the capital into which wholly paid-up shares have been converted or consolidated, and in the case of the Bank of Bengal and the Bank of Madras includes the present consolidated stock of such Banks respectively:

"Registered." "registered" means registered in the books of the Bank:

"Shareholders." "shareholders" means the duly registered holders from time to time of the shares of the Bank:

"Proprietors." "proprietors" means the duly registered holders from time to time of the capital stock of the Bank:

"Directors." "directors" means the directors assembled for the purpose of performing any of their functions under this Act:

"Board." "board" means a meeting of the directors duly called and constituted, or, as the case may be, the directors assembled at a Board:

"Auditors" and "Secretary." "auditors" and "secretary" mean those respective officers from time to time of the Bank, and "secretary" includes a secretary and treasurer and a deputy secretary:

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[1] Repealed by the Indian Companies Act, 1882 (VI of 1882), General Acts, Vol. III.

"general meeting" means the meeting of proprietors or shareholders or both, held annually under section 49; it includes any adjourned holding thereof: "General meeting."

"special meeting" means a meeting of proprietors or shareholders or both, held for the transaction of some particular business specified in the notice convening the meeting; it includes any adjourned holding thereof: "Special meeting."

"special resolution" means a resolution passed at a special meeting: "Special resolution."

"office" means the office or principal office for the time being of the Bank: "Office."

"goods" includes also bullion, wares and merchandise: "Goods."

"Presidency of Fort St. George" means the territories now under the government of the Governor of Fort St. George in Council: "Presidency of Fort St. George."

"Presidency of Bombay" means the territories now under the government of the Governor of Bombay in Council; and "Presidency of Bombay."

"Presidency of Fort William" means all the territories in British India other than the Presidency of Fort St. George and the Presidency of Bombay. "Presidency of Fort William."

CHAPTER II.

CONSTITUTION.

4. The several persons who, when this Act comes into force, are respectively the proprietors and shareholders of the said Bank of Bengal, Bank of Madras and New Bank of Bombay, Limited (hereinafter called the present Banks), or who shall at any time thereafter, by virtue of this or any other Act regulating the Bank, become proprietors or shareholders, shall continue and constitute and be bodies corporate with perpetual succession, under the name,— Proprietors and shareholders of present Banks to form bodies corporate,

in the case of the proprietors and shareholders of the said Bank of Bengal—of "The Bank of Bengal,"

in the case of the proprietors and shareholders of the said Bank of Madras—of "The Bank of Madras," and

in the case of the shareholders and proprietors of the said New Bank of Bombay, Limited—of "The Bank of Bombay,"

and shall respectively possess and enjoy all the rights, powers and immunities incident by law to a corporation aggregate; subject, nevertheless, to the provisions of this or any other Act for the time being in force regulating the Bank,

and, in particular, the proprietors of the Bank shall not be liable for its debts and engagements, and the shareholders of the Bank shall be so liable only to the extent of their shares not fully paid up. with limited liability.

The several persons who are then proprietors and shareholders of each of the present Banks of Bengal and Madras, or the executors or administrators of Proprietors and shareholders of

present Banks to be proprietors and share-holders of new Banks.

such proprietors and shareholders respectively, shall be entitled to be registered as proprietors and holders of a like quantity of stock and a proportionate number of shares, as is or are then registered in their names respectively, or in the names of the persons whom they represent respectively in the books of each of the said present Banks of Bengal and Madras, two shares in the Bank of Bengal as constituted by this Act being deemed equivalent to one share in the present Bank of Bengal, and two shares in the Bank of Madras as constituted by this Act being deemed equivalent to one share in the present Bank of Madras,

and the several persons who are then shareholders of the said New Bank of Bombay, Limited, or the executors or administrators of such shareholders respectively, shall be registered as holders of a like number of shares of the Bank of Bombay as constituted by this Act as are then registered in their names respectively, or in the names of the persons whom they represent respectively in the books of the said New Bank of Bombay, Limited; and all such shares upon which the sum of five hundred rupees has then been paid, shall be deemed to have been fully paid up.

Property of present Banks to vest respectively in new Banks.

5. All the property, moveable and immoveable, and all the securities, claims and demands, and the benefits of all agreements, of or to which the present Banks are or shall be respectively possessed or entitled, or which shall, or but for this Act might be, on the said first day of May 1876, or might at any time thereafter have been, due to, or claimed by, the said Banks respectively shall, by virtue of this Act, become vested in and devolve upon, and may be claimed, made and recovered by,—

in the case of the said Bank of Bengal,—the Bank of Bengal as constituted by this Act,

in the case of the said Bank of Madras,—the Bank of Madras as constituted by this Act, and

in the case of the said New Bank of Bombay, Limited,—the Bank of Bombay as constituted by this Act;

Claims against present Banks.

and the Bank shall, from and after the said first day of May 1876, be liable and subject to all debts, claims and demands which shall then be due or claimable from, or which, but for this Act, might be then, or might at any time thereafter, have been due or claimable from or made against the said Bank of Bengal, Bank of Madras or New Bank of Bombay, Limited, as the case may be,

and no suit or legal proceeding then pending by or against the said Bank of Bengal, Bank of Madras or New Bank of Bombay, Limited, shall cease, or abate, or become defective, in consequence of this Act, but may be continued and prosecuted by or against the Bank.

New Bank of Bombay, Limited, wound up.

6. The transfer of the assets and liabilities of the said New Bank of Bombay, Limited, to the Bank of Bombay by virtue of this Act, shall operate as a winding-up and liquidation of the said New Bank of Bombay, Limited.

No shareholder or creditor of the said New Bank of Bombay, Limited, shall take any proceedings for winding up the same under the Indian Companies Act, 1866,[1] or any Act for the time being in force relating to the winding-up of Companies ;

X of 1866.

and no person shall make, assert or take any claims, demands or proceedings against the same Bank, or the directors or officers thereof, except so far as may be necessary for enforcing the provisions of this or any other Act for the time being in force regulating the Bank of Bombay.

Banks to sue and be sued in corporate name, and use corporate seals, and may hold and transfer property.

7. The Bank shall sue and be sued by its said corporate name ;

and shall use such corporate seal as the directors from time to time appoint ;

and may as such body corporate acquire and hold, either absolutely or conditionally, for a term or in perpetuity, any property whatsoever, moveable or immoveable, and transfer, assign and convey the same.

Seal how used.

8. The seal of the Bank shall not be affixed to any instrument except in the presence of at least two directors and of the secretary and treasurer, who shall sign their names to the instrument in token of their presence, and such signing shall be independent of the signing of any person who may sign the instrument as a witness.

Unless so signed as aforesaid, such instrument shall be of no validity.

Contracts how made.

9. Contracts may be made on behalf of the Bank as follows :—

(*a*) any contract, which, if made between private persons, would be by law required to be in writing, and, if made according to English law, to be under seal, may be made on behalf of the Bank in writing under its corporate seal, and such contract may be in the same manner varied or discharged :

(*b*) any contract, which, if made between private persons, would be by law required to be in writing signed by the parties to be charged therewith, may be made on behalf of the Bank by writing signed by any person acting under the express or implied authority of the Bank, and such contract may in the same manner be varied and discharged :

(*c*) any contract, which, if made between private persons, would by law be valid, although made by parol only and not reduced into writing, may be made by parol on behalf of the Bank by any person acting under the express or implied authority of the Bank, and such contract may in the same manner be varied and discharged ;

and all contracts made according to the provisions herein contained shall be effectual in law and shall be binding upon the Bank and other parties thereto and their legal representatives.

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[1] *See* now the Indian Companies Act, 1882 (VI of 1882), General Acts, Vol. III.

CHAPTER III.

CAPITAL.

Capital of Bank of Bengal.

10. The capital of the Bank of Bengal shall consist of twenty millions of rupees in shares of five hundred rupees each, divisible into half shares, with power to increase the same, in manner hereinafter provided [1]* * * * * *.

Capital of Bank of Madras.

The capital of the Bank of Madras shall consist of five millions of rupees, in shares of five hundred rupees each, divisible into half shares, with power to increase the same, in manner hereinafter provided [1]* * * * *.

Capital of Bank of Bombay.

The capital of the Bank of Bombay shall consist of ten millions of rupees, in shares of five hundred rupees each, divisible into half shares, with power to increase the same, in manner hereinafter provided [1]* * * * * * *.

Capital of New Bank of Bombay, Limited, to be capital of Bank of Bombay.

11. The capital of the said New Bank of Bombay, Limited, already created, shall, on the first day of May 1876, constitute the capital of the Bank of Bombay, subject to be increased as aforesaid

Surrender of paid-up shares for stock.

12. Any shareholder may from time to time surrender his wholly paid-up shares, or any of them, to the directors, and demand and receive from the Bank, in lieu thereof, capital stock to the amount represented by the shares so surrendered,

Surrender of stock for shares.

and any proprietor may from time to time surrender his stock, or any portion thereof, to the directors, and demand and receive from the Bank, in lieu thereof, shares to the like amount, or as near thereto as practicable.

Power to increase or reduce capital.

13. The proprietors and shareholders of the Bank may from time to time by special resolution and with the previous sanction of the Governor General in Council increase or reduce the capital of the Bank:

Provided that no such special resolution shall be deemed to have been passed, unless at least one-third in number of the proprietors or shareholders, holding at least one-half of the paid-up capital of the Bank for the time being, be present in person or by proxy, and a majority poll by open voting in favour of the said resolution.

Procedure on resolution to increase capital.

14. When any such special resolution to increase the capital has been passed, the directors may, subject to the provisions of this or any other Act for the time being in force regulating such Bank, and to the special direction (if any) given in reference thereto by the meeting at which such resolution has been passed,—

(*a*) make such orders as they think fit for the opening of subscriptions

[1] The words "to thirty millions of rupees," "to twelve millions of rupees" and "to twenty millions of rupees" in s. 10 were repealed by the Presidency Banks (Amendment) Act 1907 (I of 1907), s. 2, General Acts, Vol. VI.

towards such increase of capital by the proprietors and shareholders;

(*b*) allow to the proprietors and shareholders such period to fill up the subscription as to the directors seem fit;

(*c*) prescribe the manner in which the proprietors and shareholders shall subscribe and pay into the Bank the proportions of new capital which they may respectively desire to subscribe; and

(*d*) make such orders as the directors think fit for the disposal and allotment of the amount of new capital that may not be subscribed for and paid up in manner aforesaid.

[1]* * * * * *

Procedure on resolution to reduce capital.

15. When any such special resolution to reduce the capital has been passed, the directors may (subject as aforesaid) prescribe the manner in which the reduction shall be carried into effect.

New capital to be subject to provisions of Act.

16. Any new capital created under the provisions of section 13 shall be subject to the provisions of this or any other Act regulating the Bank in force for the time being.

CHAPTER IV.

FORFEITURE OF STOCK AND SHARES.

Powers in regard to proprietors or shareholders indebted to Bank.

17. If any proprietor or shareholder is indebted to the Bank, the Bank may withhold payment of the dividends on the stock or shares of such proprietor or shareholder not being registered as held in trust, or as executor or administrator, and apply them in payment of the debt;

and the Bank may refuse to register the transfer of any such stock or shares until payment of such debt;

and after demand and default of payment, and notice in that behalf given to such proprietor or shareholder, or his constituted agent, or by public advertisement in the local official Gazette, if the debt remain unpaid for the space of three months after such notice, the Bank may advertise in the local official Gazette such stock or shares for sale on a day not less than fifteen days from the publication of such advertisement;

and may, on such day, sell by public auction, and subject to such conditions, if any, as the Bank thinks fit, such stock or shares, or so much or so many thereof as may be necessary, and apply the proceeds thereof in or towards payment of the said debt, with interest, from the day appointed for the

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[1] The following proviso in s. 14 was repealed by the Presidency Banks (Amendment) Act, 1907 (I of 1907), s. 2, General Acts, Vol. VI :—

"Provided that the capital shall not exceed, in the case of the Bank of Bengal, thirty millions of rupees, in the case of the Bank of Madras, twelve millions of rupees, and in the case of the Bank of Bombay, twenty millions of rupees"

payment of such debt to the time of actual payment, at such rate as may have been agreed upon, or, in the absence of such agreement, at the highest rate current for advances by way of local discounts by the Bank;

and shall pay over the surplus, if any, to such proprietor or shareholder or to his lawful representative.

CHAPTER V.

CERTIFICATES, TRANSFER AND TRANSMISSION OF SHARES AND STOCK.

Certificates for shares.

18. Every shareholder shall be entitled to a certificate, under the corporate seal of the Bank, and signed by two directors and the Secretary and Treasurer, specifying the shares held by him, and in the case of shares which are not wholly paid up, the amount paid thereon,

and any holder of more than one half share may, at his option, demand a certificate for each such half share, or one or more certificates for all or any of such half shares, and such certificate or certificates shall be delivered to him accordingly: Provided that the number of such certificates shall in no case exceed the number of half shares in respect of which they are so delivered.

Receipts for stock.

Every proprietor of capital stock shall be entitled to a receipt signed by two directors and the secretary and treasurer, and specifying the amount of stock held by him, and any such proprietor may, at his option, demand one receipt for the whole of the stock, or separate receipts for any portions of the stock, so held by him, and such receipt or receipts shall be delivered to him accordingly: Provided that no receipt shall be delivered for a portion of stock less than two hundred and fifty rupees.

Fees for certificates and receipts.

For every certificate and receipt delivered under this section there shall be paid such fee as may for the time being be prescribed under section 63, clause (*k*): Provided that no fee shall be payable for certificates or receipts delivered to the persons referred to in section 4 for shares in or stock of the Bank.

Certificates and receipts to be evidence.

Every such certificate and receipt shall be *primâ facie* evidence of the title of the shareholder or proprietor to the shares or stock therein specified.

Stock and shares to be moveable property.

19. The stock and shares of every proprietor and shareholder shall be moveable property, capable of being transferred in manner provided by the regulations contained herein, or in any other Act regulating the Bank for the time being in force, and shall not be of the nature of immoveable property; and each share shall be distinguished by its appropriate number.

Form of transfer to be approved by Board.

20. Every transfer of stock or shares may be by endorsement on the certificate or in such other form as the board from time to time may approve, and shall be presented to the Bank accompanied by such evidence as the board may require to prove the title of the transferor.

Every such transfer shall be verified in such manner as the board require, and the board may refuse to register any such transfer until the same be so verified, and, in the case of shares not fully paid up, unless the transferee is approved by the board. Board may require evidence of transmission.

The transferor shall be deemed to remain the proprietor or holder of the stock or shares transferred until the name of the transferee is registered in respect thereof. Transferor to remain proprietor till transfer registered.

21. The directors may from time to time close the register and transfer-books of the Bank for any period or periods not exceeding in the whole thirty days in any twelve consecutive months. Power to close transfer books.

22. The proprietors and shareholders for the time being, and no other persons, shall be members respectively of the bodies corporate hereby constituted, Corporation to consist of registered proprietors or shareholders only.

and, except for the purpose of excluding the provisions of section 17, the Bank shall not be bound or affected by notice of any trust to which any stock or share may be subject in the hands of the proprietor or holder thereof; Notice of trusts.

and when any stock or share is vested in more than one proprietor or holder, such proprietors or shareholders shall, as between themselves and the Bank, be considered as joint owners with benefit of survivorship: Shares vested in several holders.

Provided that, as regards voting at meetings, service of notices, and receipt of dividend, the person whose name stands first in the register as one of the proprietors or holder of such stock or shares shall be deemed the sole proprietor or holder thereof.

23. When by the death of any proprietor or shareholder his stock or shares shall devolve on his legal representative, the Bank shall not be bound to recognize any legal representative of such proprietor or shareholder, other than a person who has taken out from a Court having jurisdiction in this behalf probate of the will or letters of administration to the estate of the deceased. Transmission of stock or deceased proprietors or shareholders.

Any person becoming entitled to stock or shares in consequence of the insolvency or bankruptcy of any proprietor or shareholder, or in consequence of the marriage of any female proprietor or shareholder, may be registered as a proprietor or shareholder upon such evidence being produced as the directors may from time to time require. Transmission on insolvency or marriage.

CHAPTER VI.

DIRECTORS.

24. The business of the Bank shall be managed by the board, which shall in the first instance consist of six directors, and may subsequently consist of Board.

such number, not less than six, and not more than nine, as may be fixed by a special resolution.

Such directors shall be selected by vote of a general or special meeting.

Quorum. Three of the directors shall form a quorum for the transaction of business.

Present directors to be continued.

25. The persons who, on the first day of May 1876, are respectively directors of the Bank of Bengal, the Bank of Madras, and the New Bank of Bombay, Limited, shall be respectively directors of the Bank of Bengal, the Bank of Madras, and the Bank of Bombay, as constituted by this Act, subject to removal as hereinafter provided and to the other provisions herein contained.

Two directors to go out by rotation annually.

26. The two directors who have been longest in office shall go out of office at the general meeting.

Any director so retiring may be re-elected at such meeting; and if any question arise as to which of the directors who have been the same time in office shall retire, such question shall be decided by the directors by ballot.

Qualification of directors.

27. *Clause 1.*—No person shall be qualified to serve as a director of a Bank who is not a proprietor or holder in his own right of unencumbered stock or shares of such Bank, to the nominal amount of ten thousand rupees at the least.

Disqualification of directors.

Clause 2.—No person shall be qualified to serve as a director—

if he holds the office of director, provisional director, promoter, agent or manager of any other joint-stock Bank established, or having a branch or agency, in British India, or advertised as about to be established, or to have a branch or agency, in British India; or

if he is a salaried officer of Government not specially authorized by the Governor General in Council to serve as a director;

and the office of director shall be vacated—

if the person holding it resigns his office or dies;

if he accepts or holds any other office of profit under the Bank;

if he becomes insolvent or bankrupt, or compounds with his creditors;

if he is declared lunatic, or becomes of unsound mind;

if he is absent from the board for more than three consecutive months;

if he ceases to hold in his own right the amount or number of unencumbered stock or shares required to qualify him for the office.

Co-partners of same firm not to serve as directors at same time.

Clause 3.—No two persons who are partners of the same mercantile firm, or one of whom is the general agent of, or holds a power of procuration from, the other, or from a mercantile firm of which the other is a partner, shall be eligible or qualified to serve as directors at the same time.

Power to remove directors.

Clause 4.—The proprietors or shareholders may, by a special resolution passed by the votes of proprietors or shareholders holding in the aggregate not less than one-half of the capital, remove any director before the expiration

of his period of office, and appoint in his stead a qualified person, who shall in all respects stand in his place.

Directors to choose president and vice-president.

28. At the first meeting of the directors in every year, they shall choose a president and vice-president from among themselves, and whenever the office of president or vice-president becomes vacant, they shall, at their next meeting, choose a successor for the remainder of the current year:

[1][Provided that no person shall be chosen to be president or vice-president twice in succession.]

Chairman.

The president, or in his absence the vice-president, shall be chairman at all meetings whether of directors or of proprietors or shareholders, or of proprietors and shareholders, and shall have an additional or casting vote in all cases of an equal division of votes: Provided that if both the president and vice-president be absent at any meeting, the directors present shall elect a chairman for such meeting from among themselves, and such chairman shall, in case of an equal division of votes, have an additional or casting vote.

Casting vote.

Vacancies among directors how filled up.

29. The board shall have power at any time, and from time to time, to supply any vacancies in their number arising from the death, resignation or disqualification, under section 27, of any director.

Any director so appointed shall, for the purposes of section 26, be considered to have held office from the date on which the director in whose place he is appointed was elected, or (where such director was appointed under this section) from the date on which his mediate or immediate predecessor was elected.

Acts of directors valid notwithstanding subsequent discovery of disqualification.

30. All acts done by any person acting in good faith as a director shall be as valid as if he was a director, notwithstanding it be afterwards discovered that there was some defect in his appointment or qualification.

Indemnity of directors.

31. Every director shall be indemnified by the Bank against all losses and expenses incurred by him in or about the discharge of his duties, except such as happen from his own wilful act or default.

No director shall be responsible for any other director or for any officer, clerk or servant of the Bank, or for any loss or expense happening to the Bank by the insufficiency or deficiency of value of, or title to, any property or security acquired or taken on behalf of the Bank, or by the insolvency, bankruptcy or wrongful act of any customer or debtor of the Bank, or by anything done in the execution of the duties of his office or in relation thereto, or otherwise than for his own wilful act or default.

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1 This proviso was added by the Presidency Banks Act, 1879 (V of 1879), s. 2, General Acts. Vol. III.

CHAPTER VII.

OFFICERS OF THE BANK.

Appointment, salaries, suspension and removal of officers.

32. The directors shall have power—

to appoint such officers, clerks and servants as may be necessary to conduct the business of the Bank,

to grant salaries, pensions and other emoluments to such officers, clerks and servants, and

to suspend or remove any officer, clerk or servant of the Bank.

Accounts, receipts and documents of Bank by whom to be signed.

33. The Secretary and such other officers of the Bank as the directors may by writing notify in the local official Gazette (and, in the case of the Bank of Bengal, also in the Gazette of India) are hereby severally empowered for and on behalf of the Bank to endorse and transfer promissory notes, stock-receipts, stock, debentures, shares, securities and documents of title to goods, standing in the name of, or held by, the Bank,

and to draw, accept and endorse bills of exchange, bank post-bills, and letters of credit, in the current and authorised business of the Bank,

and to sign all other accounts, receipts and documents connected with such business.

Officers forbidden to engage in other commercial business.

34. No Secretary, inspector, manager or accountant in the service of the Bank,

and [1][without the previous sanction of the board] no khazánchi, cashier or shroff in the service of the Bank at the principal office,

and, without the previous sanction of the board, no agent, khazánchi, cashier or shroff at any branch or agency of the Bank,

shall engage in any other banking or commercial business, either on his own account or as agent for any other person or persons, or shall act as broker or agent for the sale or purchase of Government or other securities.

Security from officers.

35. Every person appointed to hold, or act in, any one or more of the said offices, and every other officer from whom the directors may from time to time think fit to require it, shall give security to the directors, for the faithful discharge of his duty to the satisfaction of the directors, in such amount and in such manner as they think proper.

The security to be given as aforesaid by the person holding or acting in the office of secretary shall not be in a less amount than fifty thousand rupees.

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[1] These words were inserted by the Presidency Banks Act, 1879 (V of 1879), s. 3, General Acts, Vol. III.

CHAPTER VIII.

BUSINESS.

36. The Bank is authorized to carry on and transact the several kinds of business hereinafter specified (that is to say): **Business which Banks may transact.**

(*a*) the advancing and lending money, and opening cash-credits, upon the security of—

(1) promissory notes, debentures, stock and other securities of the Government of India, or of the United Kingdom of Great Britain and Ireland [1][and, in the case of the Bank of Madras, securities of the Government of Ceylon];

(2) bonds, debentures and annuities charged by the Imperial Parliament on the revenues of India;

(3) stock or debentures of, or shares in, Railway or other Companies, the interest whereon shall have been guaranteed by the Secretary of State for India in Council [2][or such securities issued by State-aided railways as the Governor General in Council may from time to time prescribe];

(4) debentures or other securities for money issued by, or on behalf of, any municipal body [2][or any district board], [3][or any body of Commissioners for making improvements in any port or of trustees of any port] under the authority of any Act of a legislature established in British India [4][or the Trustees for the Improvement of the City of Bombay under the authority of the [5]City of Bombay Improvement Act, 1898];

Bom. Act IV of 1898.

(5) bullion or other goods which, or the documents of title to which, are deposited with, or assigned to, the Bank as security for such advances, loans or credits; and

(6) accepted bills of exchange and promissory notes indorsed by the payees [2][and joint and several promissory notes of two or more persons or firms unconnected with each other in general partnership]:

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[1]These words were added by the Presidency Banks (Amendment) Act, 1907 (I of 1907), s. 3(i), General Acts, Vol. VI.

[2] These words in clauses (3) and (4) respectively were added by the Presidency Banks (Amendment) Act, 1907 (I of 1907), s. 3 (ii), and (iii), respectively, and the words in clause 6 were added by s. 3 (iv) of the same Act, General Acts, Vol. VI.

[3] These words were inserted by the Presidency Banks Act, 1879, (V of 1879), s. 4, General Acts, Vol. III.

[4] These words were added by the Presidency Banks Act, 1899 (XX of 1899), s. 2, General Acts, Vol. V.

[5]Bom. Code.

Provided that such advances and loans may be made, if the directors think fit, to the Secretary of State for India in Council, without any specific security;

(*b*) the selling and realization of the proceeds of sale of any such promissory notes, debentures, stock-receipts, bonds, annuities, stock, shares, securities, bullion or goods which, or the documents of title to which, have been deposited with, or assigned to, the Bank as security for such advances, loans or credits, or which are held by the Bank, or over which the Bank is entitled to any lien or charge in respect of any such loan or advance or credit or any debt or claim of the Bank, and which have not been redeemed in due time in accordance with the terms and conditions (if any) of such deposit or assignment;

[1][(*bb*) the advancing and lending money to Courts of Wards upon the security of estates in their charge or under their superintendence and the realisation of such advances or loans and any interest due thereon, provided that no such advance or loan shall be made without the previous sanction of the Local Government concerned and that the period for which any such advance or loan is made shall not exceed six months;]

(*c*) the drawing, discounting, buying and selling of bills of exchange and other negotiable securities payable in India, or * * * * [2] in Ceylon;

(*d*) the investing of the funds of the Bank upon any of the securities specified in paragraph (*a*) of this section, clauses (1), (2), (3) and (4), and converting the same into money when required,

and from time to time altering, converting and transposing such investments for or into others of the investments above specified;

[1] [Provided that—

(1) the power of investing in the securities of the Government of Ceylon shall extend only to the Bank of Madras, and

(2) the total of the assets held at any time by the Bank of Madras either upon the security of, or invested in, securities of the Government of Ceylon in accordance with the authority conferred by paragraph (*a*), clause (1), or this paragraph, shall not exceed the sum of the deposits held and balances of cash accounts at credit at the Ceylon Branch of the said Bank of Madras;]

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[1]Paragraph (*bb*) and the proviso to paragraph (*d*) were added by the Presidency Banks (Amendment) Act, 1907 (1 of 1907), s. 3 (v) and (vi) respectively, General Acts, Vol. VI.

[2]The words "in the case of the Bank of Madras" were repealed by the Presidency Banks Act, 1879 (5 of 1879), General Acts, Vol. III.

(*e*) the making, issuing and circulating of bank-post-bills and letters of credit made payable in India, or [1]* * * * in Ceylon, to order, or otherwise than to the bearer on demand;

(*f*) the buying and selling of gold and silver, whether coined or uncoined;

(*g*) the receiving of deposits and keeping cash-accounts on such terms as may be agreed on;

(*h*) the acceptance of the charge and management of plate, jewels, title-deeds or other valuable goods on such terms as may be agreed upon;

(*i*) the selling and realising of all property, whether moveable or immoveable, which may in any way come into the possession of the Bank in satisfaction or part satisfaction of any of its claims:

(*j*) the transacting of pecuniary agency business on commission,

(*k*) the acting as agent on commission in the transaction of the following kinds of business (namely):—

(1) the buying, selling, transferring and taking charge of any securities, or any shares in any public Company;

(2) the receiving of the proceeds, whether principal, interest or dividends, of any securities or shares;

(3) the remittance of such proceeds at the risk of the principal by public or private bills of exchange, payable either in India or elsewhere;

(*l*) the drawing of bills of exchange, and the granting of letters of credit payable out of India, for the use of principals for the purpose of the remittances mentioned in the last preceding clause of this section;

(*m*) the buying, for the purpose of meeting such bills or letters of credit, of bills of exchange payable out of India, at any usance not exceeding six months;

[2][(*mm*) the borrowing of money in India for the purposes of the Bank's business, and the giving of security for money so borrowed by pledging assets or otherwise;]

(*n*) and, generally, the doing of all such matters and things as may be incidental or subsidiary to the transacting of the various kinds of business hereinbefore specified.

(*o*) It shall also be lawful for the Bank under any arrangement or agreement with the Secretary of State for India in Council—

(1) to act as banker for, and to pay, receive, collect and remit money, bullion and securities on behalf of the Government;

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1 The words "in the case of the Bank of Madras" were repealed by the Presidency Banks Act, 1879 (V of 1879), General Acts, Vol. III.

2 This clause was added by the Presidency Banks Act, 1879 (V of 1879), s. 4, General Acts, Vol. III.

(2) to undertake and transact any other business which the Government may from time to time entrust to the Bank.

And the directors shall have power from time to time to arrange and settle with the Governor General in Council the terms of remuneration on which such business shall be undertaken by the Bank, and also as to the examination and audit from time to time of the accounts and affairs of the Bank by or on behalf of the Governor General in Council.

Business which Banks may not transact.

37. The directors shall not transact any kind of banking business other than those above specified, and in particular they shall not make any loan or advance—

(*a*) for a longer period than [1][six months]; or

(*b*) upon the security of stock or shares of the Bank of which they are directors; or

(*c*) [2][save in the case of the estates specified in section 36, paragraph (*bb*)], upon mortgage, or in any other manner upon the security, of any immoveable property, or the documents of title relating thereto;

[3][(*d*) nor shall they (except upon the security mentioned in section 36, paragraph (*a*), Nos. 1 to 5 inclusive)—

discount bills for any individual or partnership firm for an amount exceeding in the whole at any one time such sum as may be prescribed by the bye-laws for the time being in force, or

lend or advance in any way to any individual or partnership-firm an amount exceeding in the whole at any one time such sum as may be so prescribed;]

(*e*) nor shall they discount or buy, or advance and lend, or open cash-credits on the security of any negotiable instrument of any individual or partnership-firm, payable in the town or at the place where it is presented for discount, which does not carry on it the several responsibilities of at least two persons or firms unconnected with each other in general partnership;

(*f*) nor shall they discount or buy, or advance and lend, or open cash-credits on the security of any negotiable security having at the

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1 The words "six months" were substituted for "three months" by the Presidency Banks (Amendment) Act, 1907 (I of 1907), s. 4(i), General Acts, Vol. VI.

2 These words were prefixed to clause (*c*) by the Presidency Banks (Amendment) Act, 1907 (I of 1907), s. 4(ii), *ibid.*

3 This clause was substituted by the Presidency Banks Act, 1879 (V of 1879), s. 5, General Acts, Vol. III. The original clause was as follows:—

"Nor shall they lend or advance, by discount of bills or otherwise, to any individual or partnership-firm [except upon the security mentioned in section 36, paragraph (*a*), numbers (1) to 5) inclusive], any sums of money exceeding in the whole at any one time such sum as may be prescribed by the bye-laws for the time being in force."

date of the proposed transaction a longer period to run than [1][six months] or, if drawn after sight, drawn for a longer period than [1][six months].

* * * * * *[2]

Overdrawing

Nothing contained in this Act shall be deemed to prevent the directors from allowing any person who keeps an account with the Bank [3][to overdraw] such account, without security, to the extent of [4][such sums not exceeding at one time ten thousand rupees in the whole as may be prescribed for the time being by the bye-laws made under this Act].

Sums payable by or to Government to be payable at Banks.

38. Until the expiration of at least fourteen days after notice has been given by notification of the Governor General in Council published, in the case of the Bank of Bengal, in the Gazette of India and the Calcutta Gazette, and in the cases of the Bank of Madras and the Bank of Bombay, in the local official Gazette, that the Bank will no longer act as banker for, or pay, receive, collect or remit money, bullion and securities on behalf of the Government,

all sums payable by or to the Secretary of State for India in Council, or by or to the Governor General in Council, or the Government of Bengal or the Governor of Fort St. George in Council or the Governor of Bombay in Council, on behalf of the Secretary of State for India in Council, at the General Treasury of Fort William in Bengal, or at the General Treasury at Madras, or at the General Treasury at Bombay, shall be payable—

in the case of the Secretary of State for India in Council, or the Governor General in Council—at the office of the Bank of Bengal, the Bank of Madras, or the Bank of Bombay, as the case may be,

in the case of the Government of Bengal—at the office of the Bank of Bengal;

in the case of the Governor of Fort St. George in Council—at the office of the Bank of Madras; and

in the case of the Governor of Bombay in Council—at the office of the Bank of Bombay.

Presentment of promissory

39. Whenever presentment of any promissory note, bond or other security for payment or any other purpose at any of the said General Treasuries would

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[1]The words "six months" were substituted in both pl ces in which they occur for "three months" by the Presidency Banks (Amendment) Act, 1907 (I of 1907), s. 4 (iii), General Acts, Vol. VI.

[2]The following proviso was repealed by the Presidency Banks (Amendment) Act, 1907 (I of 1907), s. 4 (iii), *ibid* :—

"Provided that in the case of the Bank of Madras, the directors may discount negotiable securities payable in Ceylon having at the date of the transaction a period to run not exceeding four months."

[3] The words "to overdraw" were substituted for "from overdrawing" by the Presidency Banks (Amendment) Act, 1907 (I of 1907), s. 4 (iv), *ibid.*

[4]These words were substituted for the words "sums not exceeding at any one time two thousand rupees in the whole" by the Presidency Banks (Amendment) Act, 1907 (I of 1907), s. 4 (iv), *ibid.*

notes at Banks.

heretofore have been necessary or sufficient, presentment for such purpose shall be necessary or sufficient (as the case may be) until the expiration of fourteen days after the giving of the notice mentioned in section 38—

in the case of the General Treasury of Fort William—at the office of the Bank of Bengal;

in the case of the General Treasury at Madras—at the office of the Bank of Madras; and

in the case of the General Treasury at Bombay—at the office of the Bank of Bombay.

Place of business.

40. The office of the Bank of Bengal shall be at Calcutta, that of the Bank of Madras shall be at Madras, and that of the Bank of Bombay shall be in the Island of Bombay;

and the business of the Bank shall be carried on at its office, and at such other place or places in India as the Board may deem advisable, under the provisions of section 42.

Acquisition of business-premises.

41. For the purpose of providing offices and places in and at which to carry on and manage the business of the Bank, and proper residences for its agents, the directors may—

(*a*) acquire any interest in immoveable property, and

(*b*) sell, buy in, resell, exchange, let, furnish, repair, insure against fire and otherwise deal with all or any part of the same as they may consider most conducive to the interests of the Bank.

Establishment of branches and agencies.

42. It shall be lawful for the directors to maintain, as branches or agencies of the Bank, any branches or agencies of the present Banks, which may be in existence on the first day of May 1876,

and, from time to time, to establish branches or agencies at such places within the Presidency in which the Bank is situate as they deem advantageous to the interest of the Bank,

and, with the previous consent of the Governor General in Council, and subject to such restrictions as to the business to be transacted as he thinks fit in each case to impose (such consent and restrictions being notified in the Gazette of India), to establish branches or agencies at such places outside the Prseidency in which the Bank is situate, as the directors deem advantageous for the interests of the Bank:

Proviso.

Provided that no agency of the Bank now or hereafter established in Bombay, Calcutta or Madras shall advance, or lend money, or open cash-credits on securities, or receive deposits and keep cash-accounts, or discount bills of exchange drawn and payable in the Presidency in which it is so established,

or shall act as agent on commission, or transact any business except as agent of its principal Bank, or any of its branches or other agencies.

The directors may discontinue any branch or agency maintained or established under this section.

Power of Bank to take over business of certain other Banks and for that purpose to increase its capital.

[1]**42A.** (*1*) With the sanction of the Governor General in Council, the directors may at any time enter into negotiations for and purchase and take over the business, including the capital, assets and liabilities, of any banking company carrying on business in India of which the capital is divided into shares, and may pay the consideration for such purchase either in cash or by the allotment of shares in the capital stock of the Bank, or partly in one and partly in the other of these ways, and may, for the purpose of any such allotment of shares, increase the capital stock of the Bank by the issue of such number of shares as may be determined on by them:

Provided that the directors shall not make any increase of the capital stock of the Bank under this section unless the proprietors and shareholders have passed a special resolution in accordance with the provisions of section 13 sanctioning such increase.

(*2*) The persons to whom such new shares are allotted shall be proprietors of the Bank, and be in all respects in the same position as if they had respectively subscribed and paid for the shares so allotted to them:

Provided always that the business so purchased shall after the purchase be carried on by the Bank subject to the several restrictions contained in this Act.

Explanation.—For the purposes of this section "banking company" means any company formed for the purpose of carrying on the business of banking and registered under the [2]Indian Companies Act, 1882, or the law relating to Companies for the time being in force in British India.

VI of 1882.

CHAPTER IX.

ACCOUNTS AND DIVIDENDS.

Books to be balanced twice a year.

43. The directors shall cause the books of the Bank to be balanced on every thirty-first day of December and every thirtieth day of June.

A statement of the balance at every such period, signed by a majority of the directors, shall be forthwith sent to a Secretary to the Government of India, and in the cases of the Bank of Madras and the Bank of Bombay, also to a Secretary to the Local Government.

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1 S. 42A was inserted by the Presidency Banks (Amendment) Act, 1907 (I of 1907), s 5, General Acts, Vol. VI.

2 General Acts, Vol. III.

The Governor General in Council in the case of each of the said Banks, and the Local Government in the case of the Bank of Madras and the Bank of Bombay, shall (so long as any such arrangement with the Government as aforesaid, which has already been, or shall hereafter be, entered into, remains in force) at all times be entitled to require of the directors any information touching the affairs of the Bank and the production of any document of the Bank,

and, in the case of each of the said Banks, the Governor General in Council may require the publication of such statements of its assets and liabilities at such intervals and in such form and manner as the Governor General in Council thinks fit.

Every requisition under this section shall be signified in writing under the hand of a Secretary to the Government of India or to the Local Government (as the case may be), and the Directors shall comply with every such requisition.

Dividends to be determined half-yearly.

44. An account of the profits of the Bank during the previous half-year shall be taken on or immediately after every thirty-first day of December and every thirtieth day of June,

and a dividend shall be made as soon thereafter as conveniently may be,

and the amount of such dividend shall be determined by the directors, subject to the provisions of section 45.

No unpaid dividend shall bear interest as against the Bank.

Reserve-fund.

45. The directors, before declaring any dividend, may set aside out of the profits of the Bank such a sum as they think proper as a reserve-fund, and invest the same upon any of the securities specified in section 36, paragraph (*a*), clauses (1), (2), (3) and (4).

Application of reserve-fund.

46. The directors may from time to time apply such portion as they think fit of the reserve-fund to meet contingencies, or for equalising dividends, or for any other purposes of the Bank, which they from time to time deem expedient.

CHAPTER X.

AUDIT.

Election of auditors.

47. Two auditors shall be elected and their remuneration fixed at the annual general meeting.

Who may be auditors.

The auditors may be proprietors or shareholders; but no director or other officer of the Bank is eligible during his continuance in office.

Auditors re eligible.

Any auditor shall be re-eligible on his quitting office.

Auditor's

The persons who shall be auditors on the first day of May 1876, and all

auditors elected under this section, shall severally be and continue to act as auditors until the first general meeting after their respective elections : tenure of office.

Provided that, if any casual vacancy occurs in the office of any auditor, the directors shall forthwith call a special meeting for the purpose of supplying the same. Supply of casual vacancy in office.

48. Every auditor shall be supplied with a copy of the half-yearly balance sheet, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto. Rights and duties of auditors.

Every auditor shall have a list delivered to him of all books kept by the Bank, and shall at all reasonable times have access to the books, accounts and other documents of the Bank, and may (at the expense of the Bank) employ accountants or other persons to assist him in investigating such accounts, and may, in relation to such accounts, examine the directors or any other officer of the Bank.

The auditors shall make a report to the proprietors and shareholders upon the annual balance-sheet and accounts ; and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing the particulars required by the bye-laws made under this Act, and properly drawn up so as to exhibit a true and correct view of the state of the Bank's affairs, and in case they have called for any explanation or information from the directors, whether it has been given by the directors and whether it has been satisfactory.

Such report shall be read together with the report of the directors at the annual general meeting.

CHAPTER XI.

MEETINGS.

49. On the first Monday of the month of August in every year, or as soon after such day as is convenient, a general meeting shall be held, at which the directors shall submit to the proprietors and shareholders a statement of the affairs of the Bank made up to the preceding thirtieth day of June. Annual general meeting.

A notice convening such meeting, signed by the secretary, shall be published in the local official Gazette, and in the case of the Bank of Bengal also in the Gazette of India, at least fifteen days before the meeting is held.

50. Any ten or more proprietors or shareholders holding stock or shares, or both, to the aggregate amount of fifty thousand rupees, or any three directors, may convene a special meeting upon giving fifteen days' previous notice of such meeting, and of the purpose for which the same is convened, as well to the directors as also by public advertisement in the local official Gazette, and in two of the English daily newspapers and one of the Vernacular newspapers : Special meetings.

Provided that three months' previous notice shall be thus given of any special meeting held for the purpose of increasing or reducing the capital of the Bank, and shall also be served on every proprietor and shareholder.

Quorum.

51. No business shall be transacted at any meeting, whether general or special, unless a quorum of twenty proprietors or shareholders, or both in person or by proxy, is present at the commencement of such business.

If within one hour from the time appointed for the meeting a quorum is not present, the meeting, if convened by proprietors or shareholders not being directors, shall be dissolved : in any other case it shall stand adjourned to the same day in the following week at the same time and place, and if at such adjourned meeting a quorum is not present, it shall be adjourned *sine die*.

Decision by majority of votes.

52. At meetings, whether general or special, every election and other matter submitted to the meeting shall be decided by a majority of votes, except as in section 13 and in section 27, clause 4, is specially provided,

Persons not allowed to vote.

and no person shall be allowed to vote at any such meeting in respect of any stock or share acquired by transfer, unless such transfer shall have been completed and registered at least three months before the time of such meeting.

Share-holders in arrear as to calls.

And no shareholder shall be entitled to vote at any meeting in respect of any shares held by him alone or jointly, whilst any call due from him alone or jointly remains unpaid.

Power to declare resolution carried by show of hands.

53. A declaration by the chairman of any meeting except a special meeting held under section 13, that a resolution has been carried thereat upon a show of hands, shall be conclusive, and an entry to that effect in the book of proceedings of the Bank shall be sufficient evidence of that fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution, unless, immediately on such declaration, a poll be demanded in writing by five proprietors or shareholders present and entitled to vote at such meeting.

Poll to be taken, if demanded.

54. If a poll be demanded, it shall be taken at such time and place, and (except at the special meeting last aforesaid) either by open voting or by ballot, as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

Proceedings and resolutions at meetings to be binding.

55. The proceedings at any meeting, and all resolutions and decisions of such meeting, shall be valid and binding on the Bank, so far as such proceedings, resolutions and decisions are consistent with the provisions of this or any other Act for the time being in force and regulating the Bank.

Scale of votes.

56. At all such meetings, the proprietors or shareholders shall vote according to the following scale :—

The proprietor of capital stock amounting to Rs. 2,000 or the holder of shares of which the total nominal amounts are equal to Rs. 2,000, shall be entitled to . . . . . 1 vote.

The proprietor of capital stock amounting to Rs. 10,000, or the holder of shares of which the total nominal amounts are equal to Rs. 10,000, shall be entitled to	2	votes.
The proprietor of capital stock amounting to Rs. 20,000, or the holder of shares of which the total nominal amounts are equal to Rs. 20,000, shall be entitled to	3	„
The proprietor of capital stock amounting to Rs. 30,000, or the holder of shares of which the total nominal amounts are equal to Rs. 30,000, shall be entitled to	4	„
The proprietor of capital stock amounting to Rs. 40,000, or the holder of shares of which the total nominal amounts are equal to Rs. 40,000, shall be entitled to	5	„
The proprietor of capital stock amounting to Rs. 50,000, or the holder of shares of which the total nominal amounts are equal to Rs. 50,000, shall be entitled to	6	„
The proprietor of capital stock amounting to Rs. 75,000, or the holder of shares of which the total nominal amounts are equal to Rs. 75,000, shall be entitled to	7	„
The proprietor of capital stock amounting to Rs. 1,00,000, or the holder of shares of which the total nominal amounts are equal to Rs. 1,00,000, shall be entitled to	8	„
The proprietor of capital stock amounting to Rs. 1,25,000, or the holder of shares of which the total nominal amounts are equal to Rs. 1,25,000, shall be entitled to	9	„
The proprietor of capital stock amounting to Rs. 1,50,000, or the holder of shares of which the total nominal amounts are equal to Rs. 1,50,000, shall be entitled to. . . .	10	„
The proprietor of capital stock amounting to Rs. 1,75,000, or the holder of shares of which the total amounts are equal to Rs. 1,75,000, shall be entitled to	11	„
The proprietor of capital stock amounting to Rs. 2,00,000, or the holder of shares of which the total amounts are equal to Rs. 2,00,000, shall be entitled to	12	„

Where a person is both a proprietor of stock and a holder of shares, his shares shall, for the purpose of this section, be deemed to be stock.

No proprietor or shareholder shall be entitled to more than twelve votes at any such meeting.

Proxies of proprietors or shareholders.

57. Any proprietor or shareholder entitled to vote at any meeting under this Act may give a proxy in writing, either general or special, under his hand or the hand of his attorney duly authorized, to any other proprietor or shareholder.

Such proxy shall be produced at the time of voting, and shall entitle the person to whom it is given to vote on such matters as shall be authorized by the tenor of such proxy.

But no person shall be permitted to vote in virtue of such proxy unless it has been left for registration at the office of the Bank at least three clear days before the time for holding the meeting at which it is intended to be used:

Provided that a general proxy which has been registered at such office need not be again left for registration previous to any subsequent meeting.

Existing proxies.

Proxies existing and in force with reference to any of the present Banks, on the first day of May 1876, shall continue in force and be available at meetings under this Act, anything herein contained notwithstanding.

A general power-of-attorney shall be deemed a proxy within the meaning of this section.

Voting by lunatic and minor shareholders.

58. If any proprietor or shareholder is a lunatic or idiot, he may vote by his committee or other legal curator, and if any proprietor or shareholder is a minor, he may vote by his guardian, or any one of his guardians, if more than one.

CHAPTER XII.

NOTICES.

Service of notices by Bank.

59. Every notice or other document requiring to be served by the Bank upon any proprietor or shareholder may be served either personally, or by leaving it for, or sending it through the post by registered letter addressed to, him at his registered place of abode;

and every notice sent through the post shall be deemed to have been served at the time at which, in the usual course of post, it would have been delivered.

Notices by shareholders.

60. Any proprietor or shareholder who changes his name or place of abode or being a female marries, and the husband of any such female, respectively, shall not be entitled to recover any dividend or to vote until notice of the change of name or abode or marriage be given to the Bank, in order that the same may be registered.

Every notice to be given on the part of any proprietor or shareholder shall be left at the office of the Bank, or sent through the post by registered letter addressed to the Secretary of the Bank at its principal office.

Shareholder bound by notices to previous holder.

61. Every person who, by operation of law, transfers or otherwise becomes entitled to any stock or shares, shall be bound by any and every notice or other document which, previously to his name and address being entered upon the register of the Bank in respect of such stock or shares, has been given to the person from whom he derives his title thereto.

Service of notices good notwithstanding shareholder's death.

62. When any notice or document is delivered or sent, in accordance with this Act, at or to the registered place of abode of a proprietor or shareholder, then, and notwithstanding he be then deceased, and whether or not the Bank have notice of his decease, such service of the notice or other document shall, for all purposes of this Act, be deemed service thereof on him, or, if dead, on his heirs, executors, administrators, and every of them.

CHAPTER XIII.

BYE-LAWS.

Power of directors to make bye-laws.

63. The directors shall as soon as may be make, and may from time to time alter, bye-laws regulating the following matters or any of them :—

(*a*) the maximum amount which may be advanced or [1][lent to or for which bills may be discounted for] any individual or partnership, without the security mentioned in section 36, paragraph (*a*), Nos. (1) to (5) inclusive, [2][and the extent of the sums to which accounts may be overdrawn without security under the provisions of the last paragraph of section 37] ;

(*b*) the circumstances under which alone advances may be made to directors or officers of the Bank, or the relatives of such directors or officers, or to companies, firms or individuals with which or with whom such directors, officers or relatives are connected as partners, directors, managers, servants, shareholders or otherwise ;

(*c*) the particulars to be contained in the half-yearly balance-sheet.

The directors may from time to time make bye-laws regulating the following matters or any of them :—

(*d*) the distribution of business amongst the directors ;

(*e*) their remuneration ;

(*f*) the delegation of any powers of the directors to committees consisting of members of their body ;

(*g*) the procedure at the meetings of the board or of any committee of the directors ;

(*h*) the books and accounts to be kept at the head and other offices respectively ;

(*i*) the reports and statements to be prepared and made by the chief accountant, the heads of departments, and the other officers of the Bank ;

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1 These words were substituted for the words " lent by discount of bills or otherwise to " by the Presidency Banks Act, 1879 (V of 1879), s. 6, General Acts, Vol. III.

2 These words were added by the Presidency Banks (Amendment) Act, 1907 (I of 1907), s. 6, General Acts, Vol. VI.

(*j*) the management of the branches and agencies ;

(*k*) the fees payable for certificctes of shares or receipts for stock, or for registration of transfers of shares or stock ;

(*l*) the renewal of certificates of shares and receipts for stock, which have been worn out or lost ;

Proviso.

(*m*) and, generally, for the conduct of the business of the Bank :

Provided that no bye-law, or alteration or rescission of any bye-law, shall be of any validity, except in so far as the same is consistent with the provisions of this Act, and has been previously approved by the Governor General in Council, and such approval has been signified in writing under the hand of a Secretary to the Government of India.

CHAPTER XIV.

MISCELLANEOUS.

Power to institute and compromise suits.

64. The directors may institute, conduct, defend, compromise, refer to arbitration and abandon legal and other proceedings and claims by or against the Bank or the directors or officers of the Bank, and otherwise concerning its affairs.

Evidence in legal proceedings against shareholders.

65. In any suit brought against any shareholder to recover any debt due for any call or other moneys due from him in his character of shareholder, it shall be sufficient to allege that the defendant is a shareholder of the Bank, and is indebted to the Bank in respect of a call made or other moneys due, whereby a right to sue has accrued to the Bank ;

and, on the hearing of any suit brought by the Bank against any shareholder to recover any debt due for any call, it shall be sufficient to prove that the name of the defendant is on the register of shareholders of the Bank as the holder of the shares in respect of which such debt accrued, and that the call was made, and that notice of such call was duly given to the defendant in pursuance of this or any other Act for the time being in force regulating the Bank ;

and it shall not be necessary to prove the appointment of the directors who made such call, nor that a quorum of directors was present at the Board at which such call was made, nor that the meeting at which it was made was duly convened or constituted.

Modification of 33 Geo. III, sess. 2, cap. 52.

66. Nothing in the 33rd of George the Third, session 2, chapter 52,[1] shall be deemed to render it unlawful for any servant of Government, or for any Judge of a High Court, to become a member of any corporation established under this Act.

Power to

67. Notwithstanding anything contained in this Act or in section 231 of

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[1] The East India Company Act, 1793 (33 Geo. 3, c. 52), Coll. Stat., Ed. 1899, Vol. I, p. 49.

Act No. X of 1866,[1] whenever the proprietors and shareholders have passed a special resolution that the Bank shall be wound up voluntarily under the Indian Companies Act, 1866,[1] the Bank shall be wound up accordingly, as if it were a Company under that Act :

wind up Bank under Indian Companies Act.

Provided that no such special resolution shall be deemed to have been passed unless at least one-third of the proprietors and shareholders holding at least one-half of the paid-up capital of the Bank for the time being, be present in person or by proxy, and a majority poll by open voting in favour of the said resolution and such resolution has been confirmed by a majority of such proprietors and shareholders at a subsequent special meeting held at an interval of not less than one month, nor more than two months, from the date of the meeting at which such resolution was first passed.

Sale to Banks of Bengal and Madras of Government shares therein.

68. And whereas the Government of India has agreed to sell, and the directors of the present Bank of Bengal have agreed to purchase, at a premium of twenty-two and a half per centum, the said two thousand two hundred shares of one thousand rupees each held by the Government of India in the same Bank; and it is intended that the directors of the Bank of Bengal as constituted by this Act shall cancel two thousand of such shares, and sell for the benefit of the Bank four hundred shares in the same Bank corresponding with the remaining two hundred shares so agreed to be sold and purchased ;

And whereas the Government of India has agreed to sell, and the directors of the present Bank of Madras have agreed to purchase, at a premium of ten per centum, the said five hundred and sixty-two and a half shares held by the Government of India in the same bank; and it is intended that the directors of the Bank of Madras as constituted by this Act shall cancel the same shares ;

Purchase and cancellation by directors of 62½ shares in present Bank of Madras.

And whereas the directors of the present Bank of Madras have purchased and cancelled other sixty-two and a half shares in such Bank;

And whereas the said respective directors of the present Bank of Bengal and Bank of Madras had no power to enter into the said agreements with the Government of India, and the directors of the Bank of Bengal as constituted by this Act have no power to sell the four hundred shares referred to in this section, and the said directors of the present Bank of Madras had no power to purchase and cancel the said other sixty-two and a half shares ;

And whereas the directors of the Bank of Bengal as constituted by this Act have no power to cancel the said two thousand shares and the said directors of the Bank of Madras as constituted by this Act have no power to cancel the said five hundred and sixty-two and a half shares ;

And whereas it is expedient to confirm the said agreements with the Government of India, and to indemnify the said respective directors of the present Bank of Bengal and Bank of Madras for entering into the same, and to confirm the said purchase of the said other sixty-two and a half shares by the directors

[1] *See* now the Indian Companies Act, 1882 (VI of 1882), General Acts, Vol. III, s. 256 of which corresponds to s. 231 of Act X of 1866.

of the present Bank of Madras, and to indemnify the same directors for making the same, and for cancelling the same shares, and to empower the directors of the Bank of Bengal as constituted by this Act to sell the said four hundred shares, and to empower the respective directors of the Bank of Bengal and Bank of Madras as constituted by this Act to cancel the said shares so intended to be cancelled; It is hereby further enacted as follows:—

Confirmation of agreements with Government.

(*a*) The said agreements with the Government of India are hereby confirmed, and the said respective directors of the present Bank of Bengal and Bank of Madras are hereby indemnified for entering into the same; and no suit or other proceeding shall be maintained against any such director in respect of anything *bonâ fide* done in pursuance of either of such agreements.

Confirmation of purchase of the 62½ shares.

(*b*) The said purchase of the said other sixty-two and a half shares is hereby confirmed, and the said directors of the present Bank of Madras are hereby indemnified for making the same and for cancelling the same shares; and no suit or other proceeding shall be maintained against any such director in respect of anything *bonâ fide* done in effecting such purchase and cancellation.

Sale by directors of 400 shares in Bank of Bengal.

(*c*) The directors of the Bank of Bengal as constituted by this Act shall have power to sell, and shall, as soon as conveniently may be, sell, the said four hundred shares, either together or in parcels, and either by public auction or private contract, and shall apply the proceeds in or towards paying the price of the shares of the Government of India so agreed to be purchased by the directors of the present Bank as aforesaid, or otherwise for the benefit of the Bank of Bengal as constituted by this Act.

Cancellation of certain shares.

(*d*) The directors of the Bank of Bengal as constituted by this Act shall have power to cancel, and shall, as soon as conveniently may be, cancel, the said two thousand shares, and the directors of the Bank of Madras as constituted by this Act shall have power to cancel, and shall, as soon as conveniently may be, cancel, the said five hundred and sixty-two and a half shares.

SCHEDULE.

(*See section 2.*)

PART I.—STATUTE.

Number and year.	Abbreviated title.	Extent of repeal.
47 George III, sess. 2, cap. 68.	An Act for the better government of the Settlements of Fort St. George and Bombay, &c.	Sections 8, 9 and 10.

PART II.—ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Title.
IV of 1862	An Act for regulating the Bank of Bengal.
V of 1862	An Act to provide for the payment at the Banks of Bengal, Madras and Bombay of moneys payable at the General Treasuries of Calcutta, Madras and Bombay.
VI of 1862	An Act to annex a schedule to Act IV of 1862.
XXIX of 1863	An Act to declare the receipts of the Banks of Bengal, Madras and Bombay to be sufficient in lieu of the receipts of the Sub-Treasurers of Fort William, Fort St. George and Bombay, respectively.
XIX of 1870	An Act to enable the Directors of the Bank of Bengal to act by a quorum.

PART III.—ACTS OF THE GOVERNOR OF FORT ST. GEORGE IN COUNCIL.

Number and year.	Title.
VI of 1866	An Act for repealing Madras Act V of 1862, and for regulating the Bank of Madras.
I of 1871	An Act to amend Madras Act VI of 1866, to give validity to certain acts done by the Directors of the Bank of Madras, and to enable outgoing Directors to be re-elected.

PART IV.—ACTS OF THE GOVERNOR OF BOMBAY IN COUNCIL

Number and year.	Title.
X of 1863	An Act for the Re-incorporation and Re-constitution of the Bank of Bombay.
XV of 1866	An Act to amend Act No. X of 1863 (Bombay).
I of 1867	An Act to reduce the amount of the capital of the Bank of Bombay and of the shares thereon, and to amend Act X of 1863 and Act XV of 1863 (Bombay).

ACT No. XIII OF 1876.[1]

[*29th June 1876.*]

An Act to amend the law relating to Merchant Seamen.

Preamble.

WHEREAS it is expedient to amend the law relating to Merchant Seamen in manner hereinafter appearing; It is hereby enacted as follows :—

Preliminary.

Short title. Local extent. Commencement.

1. This Act may be called the Indian Merchant Seamen's Act, 1876. It extends to the whole of British India;

And it shall come into force at once.

Interpretation-clause.

2. In this Act "seaman" includes every person (except masters, pilots and apprentices duly indentured and registered) employed or engaged in any capacity to serve at sea for the purposes of any ship.

Distressed Seamen.

Evidence of distress of seamen.

3. A certificate signed by a Secretary to the Local Government or by such other officer as it appoints in this behalf, to the effect that any seaman named therein is distressed, shall, in all proceedings under sections 211, 212 and 213 of the Merchant Shipping Act, 1854,[2] be conclusive evidence that such seaman is distressed within the meaning of the same sections; and any master of a British ship refusing to accept such seaman as a distressed seaman under the provisions of the said sections shall, for each seaman with respect to whom he so refuses, be liable to a fine which may extend to one thousand rupees. 17 & 18 Vict., c. 104.

Penalty for refusing to accept distressed seamen.

Discharge of Seamen.

Discharge of seamen.

4. No seaman or apprentice not shipped in British India shall be discharged without the previous sanction in writing of such officer as the Local Government appoints in this behalf: and such sanction shall be given or withheld at the discretion of the officer so appointed; but whenever it is withheld, the reasons for so withholding it shall be recorded by him in writing.

Any person discharging a seaman or apprentice in wilful disobedience to the prohibition contained in this section shall be liable to imprisonment for a term which may extend to three months, or to fine not exceeding one thousand rupees, or to both.

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1 For the Statement of Objects and Reasons, *see* Gazette of India, 1875, Pt. V, p. 181; for Proceedings in Council, *see ibid*, Extra Supplement, dated 11th September and 2nd October, 1875, pp. 7 and 6 respectively, and *ibid*, 1876, Supplement, p. 735.

2 *See* now ss. 191, 192 and 193 of the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), Coll. Stat., Ed. 1899, Vol. II, and with regard to s. 193, *see* also s. 4 of the Merchant Shipping (Mercantile Marine Fund) Act, 1898 (61 & 62 Vict., c. 44), printed Gazette of India, 1898, p. 465.

(*Engagement of Seamen. Deserters. Imprisoned Seamen.*)

Engagement of Seamen.

Engagement of Native seamen.

5. The Local Government, or such officer as it appoints in this behalf, may, by order in writing signed by its Secretary or by such officer, prohibit any person from engaging in the territories subject to the said Government, or in any specified portion of such territories, any Native of India to serve as a seaman on board any ship specified in such order; but in all such cases the reasons for the prohibition shall be stated in writing.

Whoever wilfully disobeys the prohibition contained in this section shall be liable to imprisonment for a term which may extend to three months, or to fine not exceeding one thousand rupees, or to both.

Deserters.

Deserters.

6. Whenever any seaman or apprentice not shipped in British India deserts or otherwise absents himself without leave from any ship in which he is engaged to serve, the master of the ship shall, within forty-eight hours of discovering such desertion or absence, report the same to such officer as the Local Government appoints in this behalf, unless in the meantime the deserter or absentee returns.

Any master wilfully neglecting to comply with the provisions of this section may be punished with fine not exceeding one hundred rupees, or imprisonment for a term which may extend to one month, or with both.

Imprisoned Seamen.

Power to deal with imprisoned seamen in accordance with section 88, Act I of 1859.

7. If any seaman or apprentice not shipped in British India is imprisoned for any offence for which he has been sentenced to imprisonment for a term not exceeding one month, any Magistrate may deal with him in the same way as he may deal with a seaman or apprentice imprisoned on any of the grounds mentioned in section 88 of Act No. I of 1859 (*for the amendment of the law relating to Merchant Seamen*).[1]

Rules as to imprisoned seamen.

8. If any seaman or apprentice not shipped in British India is imprisoned on a complaint made by or on behalf of the master or owner of the ship in which he is engaged to serve, on any of the grounds mentioned in the said Act No. I of 1859, section 88, or for any offence for which he has been sentenced to imprisonment for a term not exceeding one month, the following rules shall be observed :—

(*a*) no person shall, while such imprisonment lasts, without the previous sanction in writing of the Local Government or of such officer as it appoints in this behalf, engage any Native of India to serve as a seaman on board such ship;

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[1] Short title, The Indian Merchant Shipping Act, 1859 (I of 1859), General Acts, Vol. I.

(*b*) the Local Government, or such officer as it appoints in this behalf, may tender such seaman or apprentice to the master or owner of the ship in which he is engaged to serve, and, if such master or owner, without assigning reasons satisfactory to the Local Government or to such officer as aforesaid, refuse to receive him on board, may require such master or owner to deposit in the local Shipping Office (1) the wages due to such seaman or apprentice and his money, clothes and other effects, and (2) such sum as may in the opinion of the Local Government or of such officer as aforesaid be sufficient to defray the cost of the passage of the said seaman or apprentice to the port at which he was shipped, according to the scale of cost usual in the case of distressed seamen.

Whoever wilfully disobeys the prohibition contained in clause (*a*) of this section shall be liable to imprisonment for a term which may extend to three months, or to fine not exceeding one thousand rupees, or to both.

Any master or owner refusing or neglecting to deposit such wages, money, clothes and other effects, or such sum as aforesaid, may be punished with fine, not exceeding five hundred rupees, and, in default of payment of such fine [1][with imprisonment] for a term which may extend to three months.

Accommodation of Seamen.

Amendment of Act I of 1859, section 70.

9. And whereas it is expedient to increase the space required by the said Act No. I of 1859, section 70, to be allowed for European seamen and apprentices and for lascars or Native seamen; It is hereby further enacted as follows:—

Such section shall be read as if for the expressions "nine superficial feet," "fifty-four cubic feet" and "four superficial feet" the expressions "ten superficial feet," "sixty cubic feet" and "six superficial feet" were respectively substituted, and as if, in the third paragraph of the same section, after the word "superficial" the words "and thirty-six cubic" were inserted.

Meaning of "established par value."

Meaning of expression "established par value" in Act I of 1859, section 54.

10. And whereas doubts have been raised as to the meaning of the expression "established par value" in the said Act No. I of 1859,[2] section 54, for the purpose of removing such doubts; It is hereby enacted as follows:

For section 54 of Act No. I of 1859, the following shall be substituted (that is to say):

"54. When any moneys are payable in India to any seaman or apprentice for wages or otherwise under any agreement wherein such moneys are expressed

[1] These words were substituted for the words "to imprisonment" by the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol. IV.

[2] General Acts, Vol. I.

to be payable in British currency, the seaman or apprentice shall be entitled to demand and recover in the current coin of India the amount due to him estimated according to the rate of exchange for the time being fixed by the Secretary of State for India in Council, with the concurrence of the Lords Commissioners of Her Majesty's Treasury, for the adjustment of financial transactions between the Imperial and the Indian Governments."

ACT No. XVI OF 1876.[1]

[*5th October 1876.*]

An Act to amend the Stage Carriages Act.

Preamble.

WHEREAS Act No. XVI of 1861 (*for licensing and regulating Stage Carriages*)[2] does not apply to carriages drawn by camels or oxen, and it is expedient to render it applicable to such carriages; It is hereby enacted as follows:—

Amendment of Act XVI of 1861, s. 21.

1. For the third sentence of section 21 of the said Act, the following shall be substituted (that is to say):

"All expressions and provisions which in this Act are applied to horses shall also apply to all other animals employed in drawing any carriage ordinarily used for the purpose of conveying passengers for hire to or from any place in British India."

2. [*Local extent of Act XVI of* 1861.] *Rep. by the Stage Carriages Act (1861) Amendment Act, 1898 (I of 1898).*

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[1] Short title, The Stage Carriages Act (1861) Amendment Act, 1876. *See* the Indian Short Titles Act, 1897 (XIV of 1897), General Acts, Vol. IV.

For the Statement of Objects and Reasons, *see* Gazette of India, 1876, Pt. V, p. 552; for Proceedings in Council, *see ibid*, Supplement, pp. 717, 753 and 1090.

This Act has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), *supra*, to be in force in the following Scheduled Districts, namely:—

The Districts of Házaribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum. *See* Gazette of India, 1886, Pt. I, p. 504. The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894; Lohardaga is now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44.

As being part of Act XVI of 1861, this Act is also in force in the North-Western Provinces Tarái, *see* first foot-note under that Act, General Acts, Vol. I.

[2] Short title, The Stage Carriages Act, 1861 (XVI of 1861), General Acts, Vol. I.

ACT No. XIX OF 1876.[1]

[*16th December 1876.*]

An Act for the better control of public dramatic performances.

Preamble.

WHEREAS it is expedient to empower the Government to prohibit public dramatic performances which are scandalous, defamatory, seditious or obscene; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Dramatic Performances Act, 1876.

Local extent.

It extends to the whole of British India;

Commencement.

And it shall come into force at once.

"Magistrate" defined.

2. In this Act "Magistrate" means, in the Presidency-towns, a Magistrate of Police, and elsewhere the Magistrate of the district.

Power to prohibit certain dramatic performances.

3. Whenever the Local Government is of opinion that any play, pantomime or other drama performed or about to be performed in a public place is—

(*a*) of a scandalous or defamatory nature, or

(*b*) likely to excite feelings of disaffection to the Government established by law in British India, or

(*c*) likely to deprave and corrupt persons present at the performance,

the Local Government, or outside the Presidency towns and Rangoon the Local Government or such Magistrate as it may empower in this behalf, may by order prohibit the performance.

Explanation.—Any building or enclosure to which the public are admitted to witness a performance on payment of money shall be deemed a "public place" within the meaning of this section.

Power to serve order of prohibition.

Penalty for disobeying order.

4. A copy of any such order may be served on any person about to take part in the performance so prohibited, or on the owner or occupier of any house, room or place in which such performance is intended to take place; and any person on whom such copy is served, and who does, or willingly permits, any act in disobedience to such order, shall be punished on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine, or with both.

Power to notify order.

5. Any such order may be notified by proclamation, and a written or printed notice thereof may be stuck up at any place or places adapted for giving information of the order to the persons intending to take part in or to witness the performance so prohibited.

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[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1876, Pt. V, p. 347; for Proceedings in Council, *see ibid*, Supplement, pp. 328, 343 and 1341.

This Act has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), *supra*, to be in force in the following Scheduled Districts, namely :—

The Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum. *See* Gazette of India, 1886, Pt. I, p. 504. The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894; Lohárdaga is now called the Ranchi District, Calcutta Gazette, 1899, Pt. I, p. 44.

It has, with modifications and with the exception of s. 12, been declared in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (1) and Sch. I, Bur. Code.

Penalty for disobeying prohibition.

6. Whoever after the notification of any such order,—

(*a*) takes part in the performance prohibited thereby or in any performance substantially the same as the performance so prohibited, or

(*b*) in any manner assists in conducting any such performance, or

(*c*) is in wilful disobedience to such order present as a spectator during the whole or any part of any such performance, or

(*d*) being the owner or occupier, or having the use of any house, room or place, opens, keeps or uses the same for any such performance, or permits the same to be opened, kept or used for any such performance,

shall be punishable on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine, or with both.

Power to call for information.

7. For the purpose of ascertaining the character of any intended public dramatic performance, the Local Government, or such officer as it may specially empower in this behalf, may apply to the author, proprietor or printer of the drama about to be performed, or to the owner or occupier of the place in which it is intended to be performed, for such information as the Local Government or such officer thinks necessary.

Every person so applied to shall be bound to furnish the same to the best of his ability, and whoever contravenes this section shall be deemed to have

XLV of 1860. committed an offence under section 176 of the Indian Penal Code.[1]

Power to grant warrant to Police to enter and arrest and seize.

8. If any Magistrate has reason to believe that any house, room or place is used, or is about to be used, for any performance prohibited under this Act, he may, by his warrant, authorize any officer of Police to enter with such assistance as may be requisite, by night or by day, and by force if necessary, any such house, room or place, and to take into custody all persons whom he finds therein, and to seize all scenery, dresses and other articles found therein and reasonably suspected to have been used, or to be intended to be used, for the purpose of such performance.

Saving of prosecutions under Penal Code, sections 124A and 294.

9. No conviction under this Act shall bar a prosecution under section 124A

XLV of 1860. or section 294 of the Indian Penal Code.[1]

Power to prohibit dramatic performance in any local area, except under license.

10. Whenever it appears to the Local Government that the provisions of this section are required in any local area, it may, with the sanction of the Governor General in Council, declare, by notification in the local official Gazette, that such provisions are applied to such area from a day to be fixed in the notification.

On and after that day, the Local Government may order that no dramatic performance shall take place in any place of public entertainment within such area, except under a license to be granted by such Local Government, or such officer as it may specially empower in this behalf.

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[1] General Acts, Vol. I.

The Local Government may also order that no dramatic performance shall take place in any place of public entertainment within such area, unless a copy of the piece, if and so far as it is written, or some sufficient account of its purport, if and so far as it is in pantomime, has been furnished, not less than three days before the performance, to the Local Government, or to such officer as it may appoint in this behalf.

A copy of any order under this section may be served on any keeper of a place of public entertainment; and if thereafter he does or willingly permits any act in disobedience to such order, he shall be punishable on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine, or with both.

Powers exerciseable by Governor General.

11. The powers conferred by this Act on the Local Government may be exercised also by the Governor General in Council.

Exclusion of performances at religious festivals.

[1]**12.** Nothing in this Act applies to any *jatras* or performances of a like kind at religious festivals.

THE SPECIFIC RELIEF ACT, 1877.

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ACT No. I OF 1877.[1]

[*7th February 1877.*]

An Act to define and amend the law relating to certain kinds of Specific Relief.

Preamble.

WHEREAS it is expedient to define and amend the law relating to certain kinds of specific relief obtainable in civil suits ; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title.

1. This Act may be called the Specific Relief Act, 1877.

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1 For the Statement of Objects and Reasons, *see* Gazette of India, 1875, Pt. V, p. 258 ; for the Report of the Select Committee, *see ibid*, 1876, Pt. V, p. 1445 ; for discussions in Council, *see ibid*, 1875, Supplement, pp. 981 and 1025 ; *ibid*, 1876, Supplement, p. 1284, and *ibid*, 1877, Supplement, p. 177.

This Act has been declared in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (1) and Sch. I, *see* Bur. Code.

It has been extended, by notification under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), *supra*, to the following Scheduled Districts, namely :—

the Scheduled Districts of the Punjab	*See* Gazette of India,	1877, Pt. I, p. 562.
the Districts of Kámrup, Naugong, Darrang, Sibságar, Lakhimpur, Goálpára (excluding the Eastern Dvárs), Sylhet and Cachar (excluding the North Cachar Hills)	*ib.*,	1877, Pt. I, p. 662.
the Districts of Hazáribágh, Lohárdaga [including the present District of Palamau, separated in 1894] and Mánbhum, and Pargana Dhálbhum in the District of Singbhum [Lohárdaga is now called the Ranchi District ; Calcutta Gazette, 1899, Pt. I, p. 44]	*ib.*,	1878, Pt. II, p. 82.
the Scheduled Districts of the Central Provinces	*ib.*,	1879, Pt. I, p. 772.
Sind	*ib.*,	1880, Pt. I, p. 676.
Coorg	*ib.*,	1882, Pt. I, p. 217.
Western Jalpáiguri	*ib.*,	1882, Pt. I, p. 511.
That portion of the Jalpáiguri District known as the Western Dvárs	*ib.*,	1896, Pt. I, p. 44.
Kumáon and Garhwál and the Tarái Parganas (except s. 9)	*ib.*,	1895, Pt. I, p. 573.
Ajmere and Merwára	*ib.*,	1897, Pt. II, p. 1415.

S. 9 has been extended, by notification under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), to the Taluks of Bhadráchalam and Rakapilli and the Rampá Country, *see* Gazette of India, 1879, Pt. I, p. 630 ; to tracts in the Godavari Agency to which it had not been extended, *see ibid*, 1900, Pt. I, p. 59, also Fort St. George Gazette, 1900, Pt. I, p. 169 ; and to Kumáon, Garhwál, the Tarái Parganas, the scheduled portion of the Mirzápur District, and Jaunsar Báwar, *see* Gazette of India, 1886, Pt. I, p. 452.

S. 9 has been declared in force in British Baluchistan by the Baluchistan Laws Regulation, 1890 (I of 1890), s. 3, Bal. Code.

Local extent. It extends to the whole of British India, except the Scheduled Districts as defined in Act No. XIV of 1874.[1]

Commencement. And it shall come into force on the first day of May 1877.

2. [*Repeal of enactments.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

Interpretation-clause. 3. In this Act, unless there be something repugnant in the subject or context,—

"obligation" includes every duty enforceable by law :

"trust" includes every species of express, implied or constructive fiduciary ownership :

"trustee" includes every person holding, expressly, by implication or constructively, a fiduciary character.

Illustrations.

(*a*) Z bequeaths land to A, "not doubting that he will pay thereout an annuity of Rs. 1,000 to B for his life." A accepts the bequest. A is a trustee, within the meaning of this Act, for B, to the extent of the annuity.

(*b*) A is the legal, medical or spiritual adviser of B. By availing himself of his situation as such adviser, A gains some pecuniary advantage which might otherwise have accrued to B. A is a trustee, for B, within the meaning of this Act, of such advantage.

(*c*) A, being B's banker, discloses for his own purpose the state of B's account. A is a trustee, within the meaning of this Act, for B, of the benefit gained by him by means of such disclosure.

(*d*) A, the mortgagee of certain leaseholds, renews the lease in his own name. A is a trustee within the meaning of this Act, of the renewed lease, for those interested in the original lease.

(*e*) A, one of several partners, is employed to purchase goods for the firm. A, unknown to his co-partners, supplies them, at the market-price, with goods previously bought by himself when the price was lower, and thus makes a considerable profit. A is a trustee for his co-partners within the meaning of this Act, of the profit so made.

(*f*) A, the manager of B's indigo-factory, becomes agent for C, a vendor of indigo-seed, and receives, without B's assent, commission on the seed purchased from C for the factory. A is a trustee, within the meaning of this Act, for B, of the commission so received.

(*g*) A buys certain land with notice that B has already contracted to buy it. A is a trustee, within the meaning of this Act, for B, of the land so bought.

(*h*) A buys land from B, having notice that C is in occupation of the land. A omits to make any inquiry as to the nature of C's interest therein. A is a trustee, within the meaning of this Act, for C, to the extent of that interest.

"Settlement" means any instrument (other than a will or codicil as defined by the Indian Succession Act,[2] whereby the destination or devolution of successive interests in moveable or immoveable property is disposed of or is agreed to be disposed of : X of 1865.

Words defined in Contract Act. and all words occurring in this Act, which are defined in the Indian Contract Act, 1872,[1] shall be deemed to have the meanings respectively assigned to them by that Act. IX of 1872.

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1 *Supra.*

2 General Acts, Vol. I.

Savings.

4. Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed—

(*a*) to give any right to relief in respect of any agreement which is not a contract;

(*b*) to deprive any person of any right to relief, other than specific performance, which he may have under any contract; or

(*c*) to affect the operation of the Indian Registration Act, on documents.

Specific relief how given.

5. Specific relief is given—

(*a*) by taking possession of certain property and delivering it to a claimant;

(*b*) by ordering a party to do the very act which he is under an obligation to do;

(*c*) by preventing a party from doing that which he is under an obligation not to do;

(*d*) by determining and declaring the rights of parties otherwise than by an award of compensation; or

(*e*) by appointing a receiver.

Preventive relief.

6. Specific relief granted under clause (*c*) of section 5 is called preventive relief.

Relief not granted to enforce penal law.

7. Specific relief cannot be granted for the mere purpose of enforcing a penal law.

PART II.

OF SPECIFIC RELIEF.

CHAPTER I.

OF RECOVERING POSSESSION OF PROPERTY.

(*a*) *Possession of Immoveable Property.*

Recovery of specific immoveable property.

8. A person entitled to the possession of specific immoveable property may recover it in the manner prescribed by the Code of Civil Procedure.[1]

Suit by person dispossessed of immoveable property.

[2] 9. If any person is dispossessed without his consent of immoveable property otherwise than in due course of law, he or any person claiming through him may, by suit* * * * [3] recover possession thereof, notwithstanding any other title that may be set up in such suit.

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1 *See* now the Code of Civil Procedure, 1908 (Act V of 1908), General Acts, Vol. VI.

2 But *see* as to tenancies in the Punjab, the Punjab Tenancy Act, 1887 (XVI of 1887), s. 51, P. and N. W. Code.

3 The words " instituted within six months from the date of the dispossession " were repealed by the Repealing and Amending Act, 1891 (XII of 1891).

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

No suit under this section shall be brought against the Government.

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(*b*) *Possession of Moveable Property.*

Recovery of specific moveable property.

10. A person entitled to the possession of specific moveable property may recover the same in the manner prescribed by the Code of Civil Procedure.[1]

EXPLANATION 1.—A trustee may sue under this section for the possession of property to the beneficial interest in which the person for whom he is trustee is entitled.

EXPLANATION 2.—A special or temporary right to the present possession of property is sufficient to support a suit under this section.

Illustrations.

(*a*) A bequeaths land to B for his life, with remainder to C. A dies. B enters on the land, but C, without B's consent, obtains possession of the title-deeds. B may recover them from C.

(*b*) A pledges certain jewels to B to secure a loan. B disposes of them before he is entitled to do so. A, without having paid or tendered the amount of the loan, sues B for possession of the jewels. The suit should be dismissed, as A is not entitled to their possession, whatever right he may have to secure their safe custody.

(*c*) A receives a letter addressed to him by B. B gets back the latter without A's consent. A has such a property therein as entitles him to recover it from B.

(*d*) A deposits books and papers for safe custody with B. B loses them and C finds them, but refuses to deliver them to B when demanded. B may recover them from C, subject to C's right, if any, under section 168 of the Indian Contract Act, 1872.[2] IX of 1872.

(*e*) A, a warehouse-keeper, is charged with the delivery of certain goods to Z, which B takes out of A's possession. A may sue B for the goods.

Liability of person in possession, not as owner, to deliver to person entitled to immediate possession.

11. Any person having the possession or control of a particular article of moveable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases :—

(*a*) when the thing claimed is held by the defendant as the agent or trustee of the claimant;

(*b*) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed;

(*c*) when it would be extremely difficult to ascertain the actual damage caused by its loss;

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1 *See* now the Code of Civil Procedure, 1908 (Act V of 1908), General Acts, Vol. VI.

2 *Supra.*

(*d*) when the possession of the thing claimed has been wrongfully transferred from the claimant.

Illustrations—

of clause (*a*)—

A, proceeding to Europe, leaves his furniture in charge of B as his agent during his absence. B, without A's authority, pledges the furniture to C, and C, knowing that B had no right to pledge the furniture, advertises it for sale. C may be compelled to deliver the furniture to A, for he holds it as A's trustee.

of clause (*b*)—

Z has got possession of an idol belonging to A's family, and of which A is the proper custodian. Z may be compelled to deliver the idol to A.

of clause (*c*)—

A is entitled to a picture by a dead painter and a pair of rare China vases. B has possession of them. The articles are of too special a character to bear an ascertainable market-value. B may be compelled to deliver them to A.

CHAPTER II.

OF THE SPECIFIC PERFORMANCE OF CONTRACTS.

(*a*) *Contracts which may be specifically enforced.*

Cases in which specific performance enforceable.

12. Except as otherwise provided in this Chapter, the specific performance of any contract may in the discretion of the Court be enforced—

(*a*) when the act agreed to be done is in the performance, wholly or partly, of a trust;

(*b*) when there exists no standard for ascertaining the actual damage caused by non-performance of the act agreed to be done;

(*c*) when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief; or

(*d*) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done.

EXPLANATION.—Unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immoveable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer moveable property can be thus relieved.

Illustrations—

of clause (*a*)—

[1] A holds certain stock in trust for B. A wrongfully disposes of the stock. The law creates

[1] This Illustration is repealed wherever the Indian Trusts Act, 1882 (II of 1882), is in force—*see* Act II of 1882, ss. 1 and 2, General Acts, Vol. III.

an obligation on A to restore the same quantity of stock to B, and B may enforce specific performance of this obligation.

of clause (*b*)—

A agrees to buy, and B agrees to sell, a picture by a dead painter and two rare China vases. A may compel B specifically to perform this contract, for there is no standard for ascertaining the actual damage which would be caused by its non-performance.

of clause (*c*)—

A contracts with B to sell him a house for Rs. 1,000. B is entitled to a decree directing A to convey the house to him, he paying the purchase-money.

In consideration of being released from certain obligations imposed on it by its Act of Incorporation, a railway-company contract with Z to make an archway through their railway to connect lands of Z severed by the railway, to construct a road between certain specified points, to pay a certain annual sum towards the maintenance of this road, and also to construct a siding and a wharf as specified in the contract. Z is entitled to have this contract specifically enforced for his interest in its performance cannot be adequately compensated for by money; and the Court may appoint a proper person to superintend the construction of the archway, road, siding and wharf.

A contracts to sell, and B contracts to buy, a certain number of railway-shares of a particular description. A refuses to complete the sale. B may compel A specifically to perform this agreement, for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of a shareholder, which cannot otherwise be procured.

A contracts with B to paint a picture for B, who agrees to pay therefor Rs. 1,000. The picture is painted. B is entitled to have it delivered to him on payment or tender of the Rs. 1,000.

of clause (*d*)—

A transfers without endorsement, but for valuable consideration, a promissory note to B. A becomes insolvent, and C is appointed his assignee. B may compel C to endorse the note, for C has succeeded to A's liabilities and a decree for pecuniary compensation for not endorsing the note would be fruitless.

Contract of which the subject has partially ceased to exist.

13. Notwithstanding anything contained in section 56 of the Indian Contract Act,[1] a contract is not wholly impossible of performance because a portion of its subject-matter, existing at its date, has ceased to exist at the time of the performance. I

Illustrations.

(*a*) A contracts to sell a house to B for a lakh of rupees. The day after the contract is made the house is destroyed by a cyclone. B may be compelled to perform his part of the contract by paying the purchase-money.

(*b*) In consideration of a sum of money payable by B, A contracts to grant an annuity to B for B's life. The day after the contract has been made, B is thrown from his horse and killed. B's representative may be compelled to pay the purchase-money.

Specific performance of part of contract where part unperformed is small.

14. Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

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[1] *Supra.*

Illustrations—

(*a*) A contracts to sell B a piece of land consisting of 100 bighás. It turns out that 98 bighás of the land belong to A, and the two remaining bighás to a stranger, who refuses to part with them. The two bighás are not necessary for the use or enjoyment of the 98 bighás, nor so important for such use or enjoyment that the loss of them may not be made good in money. A may be directed at the suit of B to convey to B the 98 bighas and to make compensation to him for not conveying the two remaining bighas; or B may be directed, at the suit of A, to pay to A, on receiving the conveyance and possession of the land, the stipulated purchase-money less a sum awarded as compensation for the deficiency.

(*b*) In a contract for the sale and purchase of a house and lands for two lakhs of rupees, it is agreed that part of the furniture should be taken at a valuation. The Court may direct specific performance of the contract notwithstanding the parties are unable to agree as to the valuation of the furniture, and may either have the furniture valued in the suit and include it in the decree for specific performance, or may confine its decree to the house.

Specific performance of part of contract where part unperformed is large.

15. Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, provided that the plaintiff relinquishes all claim to further performance, and all right to compensation either for the deficiency, or for the loss or damage sustained by him through the default of the defendant.

Illustrations.

(*a*) A contracts to sell to B a piece of land consisting of 100 bighás. It turns out that 50 bighás of the land belong to A, and the other 50 bighás to a stranger, who refuses to part with them. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the 50 bighás which belong to A, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey those 50 bighás to him on payment of the purchase-money.

(*b*) A contracts to sell to B an estate with a house and garden for a lakh of rupees. The garden is important for the enjoyment of the house. It turns out that A is unable to convey the garden. A cannot obtain a decree against B for the specific performance of the contract, but if B is willing to pay the price agreed upon, and to take the estate and house without the garden, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey the house to him on payment of the purchase-money.

Specific performance of independent part of contract.

16. When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part.

Bar in other cases of specific performance of part of contract.

17. The Court shall not direct the specific performance of a part of a contract except in cases coming under one or other of the three last preceding sections.

Purchaser's rights against vendor with imperfect title.

18. Where a person contracts to sell or let certain property, having only an imperfect title thereto, the purchaser or lessee (except as otherwise provided by this Chapter) has the following rights :—

(*a*) if the vendor or lessor has subsequently to the sale or lease acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest ;

(*b*) where the concurrence of other persons is necessary to validate the title, and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence ;

(*c*) where the vendor professes to sell unincumbered property, but the property is mortgaged for an amount not exceeding the purchase-money, and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a conveyance from the mortgagee ;

(*d*) where the vendor or lessor sues for specific performance of the contract, and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest of the vendor or lessor in the property agreed to be sold or let.

Power to award compensation in certain cases.

19. Any person suing for the specific performance of a contract may also ask for compensation for its breach, either in addition to, or in substitution for, such performance.

If in any such suit the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

Compensation awarded under this section may be assessed in such manner as the Court may direct.

EXPLANATION.—The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section.

Illustrations—

of the second paragraph—

A contracts to sell a hundred maunds of rice to B. B brings a suit to compel A to perform the contract or to pay compensation. The Court is of opinion that A has made a valid

contract and has broken it, without excuse, to the injury of B, but that specific performance is not the proper remedy. It shall award to B such compensation as it deems just.

of the third paragraph—

A contracts with B to sell him a house for Rs. 1,000, the price to be paid and the possession given on the 1st January 1877. A fails to perform his part of the contract, and B brings his suit for specific performance and compensation, which is decided in his favour on the 1st January 1878. The decree may, besides ordering specific performance, award to B compensation for any loss which he has sustained by A's refusal.

of the Explanation—

A, a purchaser, sues B, his vendor, for specific performance of a contract for the sale of a patent. Before the hearing of the suit the patent expires. The Court may award A compensation for the non-performance of the contract, and may, if necessary, amend the plaint for that purpose.

A sues for the specific performance of a resolution passed by the Directors of a public company, under which he was entitled to have a certain number of shares allotted to him, and for compensation for the non-performance of the resolution. All the shares had been allotted before the institution of the suit. The Court may, under this section, award A compensation for the non-performance.

Liquidation of damages not a bar to specific performance.

20. A contract, otherwise proper to be specifically enforced, may be thus enforced, though a sum be named in it as the amount to be paid in case of its breach, and the party in default is willing to pay the same.

Illustration.

A contracts to grant B an under-lease of property held by A under C, and that he will apply to C for a license necessary to the validity of the under-lease, and that, if the license is not procured, A will pay B Rs. 10,000. A refuses to apply for the license and offers to pay B the Rs. 10,000. B is nevertheless entitled to have the contract specifically enforced if C consents to give the license.

(*b*) *Contracts which cannot be specifically enforced.*

Contracts not specifically enforceable.

21. The following contracts cannot be specifically enforced :—

(*a*) a contract for the non-performance of which compensation in money is an adequate relief ;

(*b*) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature, is such, that the Court cannot enforce specific performance of its material terms ;

(*c*) a contract the terms of which the Court cannot find with reasonable certainty ;

(*d*) a contract which is in its nature revocable ;

(*e*) a contract made by trustees either in excess of their powers or in breach of their trust ;

(*f*) a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company which is in excess of its powers ;

(*g*) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date ;

(*h*) a contract of which a material part of the subject-matter, supposed by both parties to exist, has, before it has been made, ceased to exist.

And, save as provided by the Code of Civil Procedure,[1] [2][and the Indian Arbitration Act, 1899,] no contract to refer [3][present or future differences] to arbitration shall be specifically enforced ; [4]but if any person who has made such a contract and has refused to perform it sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

Illustrations—

to (*a*)—

A contracts to sell, and B contracts to buy, a lakh of rupees in the four per cent. loan of the Government of India :

A contracts to sell, and B contracts to buy, 40 chests of indigo at Rs. 1,000 per chest :

In consideration of certain property having been transferred by A to B, B contracts to open a credit in A's favour to the extent of Rs. 10,000, and to honour A's drafts to that amount.

The above contracts cannot be specifically enforced, for in the first and second both A and B, and in the third A, would be reimbursed by compensation in money.

to (*b*)—

A contracts to render personal service to B ;

A contracts to employ B on personal service :

A, an author, contracts with B, a publisher, to complete a literary work.

B cannot enforce specific performance of these contracts.

A contracts to buy B's business at the amount of a valuation to be made by two valuers, one to be named by A and the other by B. A and B each name a valuer, but before the valuation is made A instructs his valuer not to proceed.

By a charter-party entered into in Calcutta between A, the owner of a ship, and B, the charterer, it is agreed that the ship shall proceed to Rangoon, and there load a cargo of rice, and thence proceed to London, freight to be paid, one-third on arrival at Rangoon, and two-thirds on delivery of the cargo in London :

A lets land to B and B contracts to cultivate it in a particular manner for three years next after the date of the lease :

A and B contract that, in consideration of annual advances to be made by A, B will for three years next after the date of the contract grow particular crops on the land in his possession and deliver them to A when cut and ready for delivery :

A contracts with B that, in consideration of Rs. 1,000 to be paid to him by B, he will paint a picture for B :

A contracts with B to execute certain works which the Court cannot superintend :

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[1] *See* now the Code of Civil Procedure, 1908 (Act V of 1908), General Acts, Vol. VI.

[2] These words were inserted by the Indian Arbitration Act, 1899 (IX of 1899), s. 21, General Acts, Vol. V.

[3] These words were substituted for the words " a controversy " by *ibid.*

[4] The last thirty-seven words of s. 21 do not apply to any submission or arbitration to which the provisions of the Indian Arbitration Act, 1899, for the time being apply ; *see* Act IX of 1899, s. 3, General Acts, Vol. V.

A contracts to supply B with all the goods of a certain class which B may require :

A contracts with B to take from B a lease of a certain house for a specified term, at a specified rent, "if the drawing-room is handsomely decorated," even if it is held to have so much certainty that compensation can be recovered for its breach :

A contracts to marry B :

The above contracts cannot be specifically enforced.

to (*c*)—

A, the owner of a refreshment-room, contracts with B to give him accommodation there for the sale of his goods and to furnish him with the necessary appliances. A refuses to perform his contract. The case is one for compensation and not for specific performance, the amount and nature of the accommodation and appliances being undefined.

to (*d*)—

A and B contract to become partners in a certain business, the contract not specifying the duration of the proposed partnership. This contract cannot be specifically performed, for, if it were so performed, either A or B might at once dissolve the partnership.

to (*e*)—

A is a trustee of land with power to lease it for seven years. He enters into a contract with B to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This contract cannot be specifically enforced.

The Directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders.

They contract to sell it without any such sanction. This contract cannot be specifically enforced.

Two trustees, A and B, empowered to sell trust-property worth a lakh of rupees, contract to sell it to C for Rs. 30,000. The contract is so disadvantageous as to be a breach of trust. C cannot enforce its specific performance.

The promoters of a company for working mines contract that the company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property— and in fact agree to pay an extravagant price therefor. They also stipulate that the vendors shall give them a bonus out of the purchase-money. This contract cannot be specifically enforced.

to (*f*)—

A company existing for the sole purpose of making and working a railway contract for the purchase of a piece of land for the purpose of erecting a cotton-mill thereon. This contract cannot be specifically enforced.

to (*g*)—

A contracts to let for twenty-one years to B the right to use such part of a certain railway made by A as was upon B's land, and that B should have a right of running carriages over the whole line on certain terms, and might require A to supply the necessary engine-power, and that A should during the term keep the whole railway in good repair. Specific performance of this contract must be refused to B.

to (*h*)—

A contracts to pay an annuity to B for the lives of C and D. It turns out that, at the date of the contract, C, though supposed by A and B to be alive, was dead. The contract cannot be specifically performed.

(c) *Of the Discretion of the Court.*

Discretion as to decree.

22. The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so ;

ing specific performance.

but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance :

I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

Illustrations.

(*a*) A, a tenant for life of certain property, assigns his interest therein to B. C contracts to buy, and B contracts to sell, that interest. Before the contract is completed, A receives a mortal injury from the effects of which he dies the day after the contract is executed. If B and C were equally ignorant or equally aware of the fact, B is entitled to specific performance of the contract. If B knew the fact, and C did not, specific performance of the contract should be refused to B.

(*b*) A contracts to sell to B the interest of C in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should turn out that C's interest is worth nothing. In fact, the value of C's interest depends on the result of certain partnership-accounts, on which he is heavily in debt to his partners. This indebtedness is known to A, but not to B. Specific performance of the contract should be refused to A.

(*c*) A contracts to sell, and B contracts to buy, certain land. To protect the land from floods, it is necessary for its owner to maintain an expensive embankment. B does not know of this circumstance, and A conceals it from him. Specific performance of the contract should be refused to A.

(*d*) A's property is put up to auction. B requests C, A's attorney, to bid for him. C does this inadvertently and in good faith. The persons present, seeing the vendor's attorney bidding, think that he is mere puffer and cease to compete. The lot is knocked down to B at a low price. Specific performance of the contract should be refused to B.

II. Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff.

Illustrations.

(*e*) A is entitled to some land under his father's will on condition that if he sells it within twenty-five years, half the purchase-money shall go to B. A, forgetting the condition, contracts, before the expiration of the twenty-five years, to sell the land to C. Here the enforcement of the contract would operate so harshly on A, that the Court will not compel its specific performance in favour of C.

(*f*) A and B, trustees, join their beneficiary, C, in a contract to sell the trust-estate to D, and personally agree to exonerate the estate from heavy incumbrances to which it is subject. The purchase-money is not nearly enough to discharge those incumbrances, though, at the date of the contract, the vendors believed it to be sufficient. Specific performance of the contract should be refused to D.

(*g*) A, the owner of an estate, contracts to sell it to B, and stipulates that he, A, shall not be obliged to define its boundary. The estate really comprises a valuable property, not known to either to be part of it. Specific performance of the contract should be refused to B unless he waives his claim to the unknown property.

(*h*) A contracts with B to sell him certain land, and to make a road to it from a certain railway-station. It is found afterwards that A cannot make the road without exposing himself to litigation. Specific performance of the part of the contract relating to the road should be refused to B, even though it may be held that he is entitled to specific performance of the rest with compensation for loss of the road.

(*i*) A, a lessee of mines, contracts with B, his lessor, that at any time during the continuance of the lease B may give notice of his desire to take the machinery and plant used in and about

the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance of it should be refused to B.

(*j*) A contracts to buy certain land from B. The contract is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to B.

(*k*) A contracts with B to buy from B's manufactory and not elsewhere all the goods of a certain class used by A in his trade. The Court cannot compel B to supply the goods, but if he does not supply them A may be ruined, unless he is allowed to buy them elsewhere. Specific performance of the contract should be refused to B.

The following is a case in which the Court may properly exercise a discretion to decree specific performance :—

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

Illustration.

A sells land to a railway-company, who contract to execute certain works for his convenience. The company take the land and use it for their railway. Specific performance of the contract to execute the works should be decreed in favour of A.

(*d*) *For whom Contracts may be specifically enforced.*

Who may obtain specific performance.

23. Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by—

(*a*) any party thereto,

(*b*) the representative in interest, or the principal, of any party thereto : provided that, where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed ;

(*c*) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder ;

(*d*) where the contract has been entered into by a tenant for life in due exercise of a power, the remainderman ;

(*e*) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant ;

(*f*) a reversioner in remainder, where the agreement is such a covenant and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach ;

(*g*) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation ;

(*h*) when the promoters of a public company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company.

(*e*) *For whom Contracts cannot be specifically enforced.*

Personal bars to the relief.

24. Specific performance of a contract cannot be enforced in favour of a person—

(*a*) who could not recover compensation for its breach ;

(*b*) who has become incapable of performing, or violates, any essential term of the contract that on his part remains to be performed ;

(*c*) who has already chosen his remedy and obtained satisfaction for the alleged breach of contract ; or

(*d*) who, previously to the contract, had notice that a settlement of the subject-matter thereof (though not founded on any valuable consideration) had been made and was then in force.

Illustrations.

to clause (*a*)—

A, in the character of agent for B, enters into an agreement with C to buy C's house. A is in reality acting not as agent for B but on his own account. A cannot enforce specific performance of this contract.

to clause (*b*)—

A contracts to sell B a house and to become tenant thereof for a term of fourteen years from the date of the sale at a specified yearly rent. A becomes insolvent. Neither he nor his assignee can enforce specific performance of the contract.

A contracts to sell B a house and garden in which there are ornamental trees, a material element in the value of the property as a residence. A, without B's consent, fells the trees. A cannot enforce specific performance of the contract.

A, holding land under a contract with B for a lease, commits waste, or treats the land in an unhusbandlike manner. A cannot enforce specific performance of the contract.

A contracts to let, and B contracts to take, an unfinished house, B contracting to finish the house and the lease to contain covenants on the part of A to keep the house in repair. B finishes the house in a very defective manner : he cannot enforce the contract specifically though A and B may sue each other for compensation for breach of it.

to clause (*c*)—

A contracts to let, and B contracts to take, a house for a specified term at a specified rent. B refuses to perform the contract. A thereupon sues for, and obtains, compensation for the breach. A cannot obtain specific performance of the contract.

Contracts to sell property by one who has no title or who is a voluntary settler.

25. A contract for the sale or letting of property, whether moveable or immoveable, cannot be specifically enforced in favour of a vendor or lessor—

(*a*) who, knowing himself not to have any title to the property, has contracted to sell or let the same ;

(*b*) who, though he entered into the contract believing that he had a good title to the property, cannot, at the time fixed by the parties

or by the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt;

(*c*) who, previous to entering into the contract, has made a settlement (though not founded on any valuable consideration) of the subject-matter of the contract.

Illustrations.

(*a*) A, without C's authority, contracts to sell to B an estate which A knows to belong to C. A cannot enforce specific performance of this contract, even though C is willing to confirm it.

(*b*) A bequeaths his land to trustees, declaring that they may sell it with the consent in writing of B. B gives a general prospective assent in writing to any sale which the trustees may make. The trustees then enter into a contract with C to sell him the land. C refuses to carry out the contract. The trustees cannot specifically enforce this contract, as in the absence of B's consent to the particular sale to C, the title which they can give C is, as the law stands, not free from reasonable doubt.

(*c*) A, being in possession of certain land, contracts to sell it to Z. On enquiry it turns out that A claims the land as heir of B, who left the country several years before, and is generally believed to be dead, but of whose death there is no sufficient proof. A cannot compel Z specifically to perform the contract.

(*d*) A, out of natural love and affection, makes a settlement of certain property on his brothers and their issue, and afterwards enters into a contract to sell the property to a stranger. A cannot enforce specific performance of this contract so as to override the settlement and thus prejudice the interests of the persons claiming under it.

(*f*) *For whom Contracts cannot be specifically enforced, except with a Variation.*

Non-enforcement except with variation.

26. Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases (namely):—

(*a*) where by fraud or mistake of fact the contract of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it;

(*b*) where by fraud, mistake of fact, or surprise the defendant entered into the contract under a reasonable misapprehension as to its effect as between himself and the plaintiff;

(*c*) where the defendant, knowing the terms of the contract and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's part, which adds to the contract, but which he refuses to fulfil;

(*d*) where the object of the parties was to produce a certain legal result, which the contract as framed is not calculated to produce;

(*e*) where the parties have, subsequently to the execution of the contract, contracted to vary it.

Illustrations.

(*a*) A, B and C sign a writing by which they purport to contract each to enter into a bond to D for Rs. 1,000. In a suit by D, to make A, B and C separately liable each to the extent of Rs. 1,000, they prove that the word "each" was inserted by mistake; that the intention was that they should give a joint bond for Rs. 1,000. D can obtain the performance sought only with the variation thus set up.

(*b*) A sues B to compel specific performance of a contract in writing to buy a dwelling-house. B proves that he assumed that the contract included an adjoining yard, and the contract was so framed as to leave it doubtful whether the yard was so included or not. The Court will refuse to enforce the contract, except with the variation set up by B.

(*c*) A contracts in writing to let to B a wharf, together with a strip of A's land delineated in a map. Before signing the contract, B proposed orally that he should be at liberty to substitute for the strip mentioned in the contract another strip of A's land of the same dimensions, and to this A expressly assented. B then signed the written contract. A cannot obtain specific performance of the written contract, except with the variation set up by B.

(*d*) A and B enter into negociations for the purpose of securing land for B for his life, with remainder to his issue. They execute a contract, the terms of which are found to confer an absolute ownership on B. The contract so framed cannot be specifically enforced.

(*e*) A contracts in writing to let a house to B, for a certain term, at the rent of Rs. 100 per month, putting it first into tenantable repair. The house turns out to be not worth repairing, so, with B's consent, A pulls it down and erects a new house in its place: B contracting orally to pay rent at Rs. 120 per mensem. B then sues to enforce specific performance of the contract in writing. He cannot enforce it except with the variations made by the subsequent oral contract.

Relief against parties and persons claiming under them by subsequent title.

(*g*) *Against whom Contracts may be specifically enforced.*

27. Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

(*a*) either party thereto;

(*b*) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(*c*) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(*d*) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;

(*e*) when the promoters of a public company have, before its incorporation, entered into a contract, the company: provided that the company has ratified and adopted the contract and the contract is warranted by the terms of the incorporation.

Illustrations—

to clause (*b*)—

A contracts to convey certain land to B by a particular day. A dies intestate before that day without having conveyed the land. B may compel A's heir or other representative in interest to perform the contract specifically.

A contracts to sell certain land to B for Rs. 5,000. A afterwards conveys the land for Rs. 6,000 to C, who has notice of the original contract. B may enforce specific performance of the contract as against C.

A contracts to sell land to B for Rs. 5,000. B takes possession of the land. Afterwards A sells it to C for Rs. 6,000. C makes no enquiry of B relating to his interest in the land. B's possession is sufficient to affect C with notice of his interest, and he may enforce specific performance of the contract against C.

A contracts, in consideration of Rs. 1,000, to bequeath certain of his lands to B. Immediately after the contract A dies intestate, and C takes out administration to his estate. B may enforce specific performance of the contract against C.

A contracts to sell certain land to B. Before the completion of the contract, A becomes a lunatic and C is appointed his committee. B may specifically enforce the contract against C.

to clause (*c*)—

A, the tenant for life of an estate, with remainder to B, in due exercise of a power conferred by the settlement under which he is tenant for life, contracts to sell the estate to C, who has notice of the settlement. Before the sale is completed, A dies. C may enforce specific performance of the contract against B.

A and B are joint tenants of land, his undivided moiety of which either may alien in his lifetime, but which, subject to that right, devolves on the survivor. A contracts to sell his moiety to C and dies. C may enforce specific performance of the contract against B.

(*h*) *Against whom Contracts cannot be specifically enforced.*

What parties cannot be compelled to perform.

28. Specific performance of a contract cannot be enforced against a party thereto in any of the following cases :—

(*a*) if the consideration to be received by him is so grossly inadequate with reference to the state of things existing at the date of the contract, as to be either by itself or coupled with other circumstances evidence of fraud or of undue advantage taken by the plaintiff;

(*b*) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention or unfair practices, of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled ;

(*c*) if his assent was given under the influence of mistake of fact, misapprehension or surprise : Provided that, when the contract provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the contract may be specifically enforced in other respects if proper to be so enforced.

Illustrations—

to clause (*c*)—

A, one of two executors, in the erroneous belief that he had the authority of his co-executor, enters into an agreement for the sale to B of his testator's property. B cannot insist on the sale being completed.

A directs an auctioneer to sell certain land. A afterwards revokes the auctioneer's authority as to 20 bighás of this land, but the auctioneer inadvertently sells the whole to B, who has not notice of the revocation. B cannot enforce specific performance of the agreement.

(i) The effect of dismissing a Suit for Specific Performance.

Bar of suit for breach after dismissal.

29. The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be.

(j) Awards and Directions to execute Settlements.

Application of preceding sections to awards and testamentary directions to execute settlements.

30. The provisions of this Chapter as to contracts shall, *mutatis mutandis*, apply to awards and to directions in a will or codicil to execute a particular settlement.

CHAPTER III.

OF THE RECTIFICATION OF INSTRUMENTS.

When instrument may be rectified.

31. When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing does not truly express their intention, either party, or his representative in interest, may institute a suit to have the instrument rectified ; and if the Court find it clearly proved that there has been fraud or mistake in framing the instrument, and ascertain the real intention of the parties in executing the same, the Court may in its discretion rectify the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

Illustrations.

(*a*) A, intending to sell to B his house and one of three godowns adjacent to it, executes a conveyance prepared by B, in which, through B's fraud, all three godowns are included. Of the two godowns which were fraudulently included, B gives one to C and lets the other to D for a rent, neither C nor D having any knowledge of the fraud. The conveyance may, as against B and C, be rectified so as to exclude from it the godown given to C ; but it cannot be rectified so as to affect D's lease.

(*b*) By a marriage settlement, A, the father of B, the intended wife, covenants with C, the intended husband, to pay to C, his executors, administrators and assigns, during A's life, an annuity of Rs. 5,000. C dies insolvent and the official assignee claims the annuity from A. The Court, on finding it clearly proved that the parties always intended that this annuity should be paid as a provision for B and her children, may rectify the settlement and decree that the assignee has no right to any part of the annuity.

Presumption as to intent of parties.

32. For the purpose of rectifying a contract in writing, the Court must be satisfied that all the parties thereto intended to make an equitable and conscientious agreement.

Principles of rectification.

33. In rectifying a written instrument, the Court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the enquiry what the language of the instrument was intended to be.

Specific enforcement of rectified contract.

34. A contract in writing may be first rectified and then, if the plaintiff has so prayed in his plaint and the Court thinks fit, specifically enforced.

Illustration.

A contracts in writing to pay his attorney, B, a fixed sum in lieu of costs. The contract contains mistakes as to the name and rights of the client, which, if construed strictly, would exclude B from all rights under it. B is entitled, if the Court thinks fit, to have it rectified, and to an order for payment of the sum, as if at the time of its execution it had expressed the intention of the parties.

CHAPTER IV.

OF THE RESCISSION OF CONTRACTS.

When rescission may be adjudged.

35. Any person interested in a contract in writing[1] may sue to have it rescinded, and such rescission may be adjudged by the Court in any of the following cases, namely :—

(*a*) where the contract is voidable or terminable by the plaintiff ;

(*b*) where the contract is unlawful for causes not apparent on its face, and the defendant is more to blame than the plaintiff ;

(*c*) where a decree for specific performance of a contract of sale, or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchase-money or other sums which the Court has ordered him to pay.

When the purchaser or lessee is in possession of the subject-matter, and the Court finds that such possession is wrongful, the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him as such possessor.

In the same case, the Court may, by order in the suit in which the decree has been made and not complied with, rescind the contract, either so far as regards the party in default, or altogether, as the justice of the case may require.

Illustrations.

to (*a*)—

A sells a field to B. There is a right of way over the field of which A has direct personal knowledge, but which he conceals from B. B is entitled to have the contract rescinded.

to (*b*)—

A, an attorney, induces his client B, a Hindu widow, to transfer property to him for the purpose of defrauding B's creditors. Here the parties are not equally in fault, and B is entitled to have the instrument of transfer rescinded.

Rescission for mistake.

36. Rescission of a contract in writing[1] cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

[1] The words "in writing" are repealed wherever the Transfer of Property Act, 1882 (IV of 1882), is in force, *see* Act IV of 1882, ss. 1 and 2, General Acts, Vol. I.

Alternative prayer for rescission in suit for specific performance.

37. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled; and the Court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly.

Court may require party rescinding to do equity.

38. On adjudging the rescission of a contract, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

CHAPTER V.

OF THE CANCELLATION OF INSTRUMENTS.

When cancellation may be ordered.

39. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

If the instrument has been registered under the Indian Registration Act,[1] the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

Illustrations.

(*a*) A, the owner of a ship, by fraudulently representing her to be seaworthy, induces B, an underwriter, to insure her. B may obtain the cancellation of the policy.

(*b*) A conveys land to B, who bequeaths it to C and dies. Thereupon D gets possession of the land and produces a forged instrument stating that the conveyance was made to B in trust for him. C may obtain the cancellation of the forged instrument.

(*c*) A, representing that the tenants on his land were all at will, sells it to B, and conveys it to him by an instrument, dated the 1st January 1877. Soon after that day, A fraudulently grants to C a lease of part of the lands, dated the 1st October 1876, and procures the lease to be registered under the Indian Registration Act.[1] B may obtain the cancellation of this lease.

(*d*) A agrees to sell and deliver a ship to B, to be paid for by B's acceptances of four bills of exchange, for sums amounting to Rs. 30,000, to be drawn by A on B. The bills are drawn and accepted, but the ship is not delivered according to the agreement. A sues B on one of the bills. B may obtain the cancellation of all the bills.

What instruments may be partially cancelled.

40. Where an instrument is evidence of different rights or different obligations, the Court may, in a proper case, cancel it in part and allow it to stand for the residue.

Illustration.

A draws a bill on B, who endorses it to C, by whom it appears to be endorsed to D, who endorses it to E. C's endorsement is forged. C is entitled to have such endorsement cancelled, leaving the bill to stand in other respects.

Power to require party for whom instrument is cancelled to make compensation.

41. On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

[1] See now the Indian Registration Act, 1908 (XVI of 1908), General Acts, Vol. VI.

CHAPTER VI.[1]

OF DECLARATORY DECREES.

Discretion of Court as to declaration of status or right.

42. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Bar to such declaration.

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

EXPLANATION.—A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

Illustrations.

(*a*) A is lawfully in possession of certain land. The inhabitants of a neighbouring village claim a right of way across the land. A may sue for a declaration that they are not entitled to the right so claimed.

(*b*) A bequeaths his property to B, C and D, "to be equally divided amongst all and each of them, if living at the time of my death, then amongst their surviving children." No such children are in existence. In a suit against A's executor, the Court may declare whether B, C and D took the property absolutely, or only for their lives, and it may also declare the interests of the children before their rights are vested.

(*c*) A covenants that, if he should at any time be entitled to property exceeding one lakh of rupees, he will settle it upon certain trusts. Before any such property accrues, or any persons entitled under the trusts are ascertained, he institutes a suit to obtain a declaration that the covenant is void for uncertainty. The Court may make the declaration.

(*d*) A alienates to B property in which A has merely a life interest. The alienation is invalid as against C, who is entitled as reversioner. The Court may in a suit by C against A and B declare that C is so entitled.

(*e*) The widow of a sonless Hindu alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survive her may, in a suit against the alienee, obtain a declaration that the alienation was made without legal necessity and was therefore void beyond the widow's lifetime.

(*f*) A Hindu widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may, in a suit against the adopted son, obtain a declaration that the adoption was invalid.

(*g*) A is in possession of certain property. B, alleging that he is the owner of the property, requires A to deliver it to him. A may obtain a declaration of his right to hold the property.

(*h*) A bequeaths property to B for his life, with remainder to B's wife and her children, if any, by B, but, if B die without any wife or children, to C. B has a putative wife, D, and children, but C denies that B and D were ever lawfully married. D and her children may, in B's life time, institute a suit against C and obtain therein a declaration that they are truly the wife and children of B.

Effect of declaration.

43. A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

[1] As to the Punjab, *see* also the Punjab Land-revenue Act, 1887 (XVII of 1887), s. 45, P. and N. W. Code.

Illustration.

A, a Hindu, in a suit to which B, his alleged wife, and her mother, are defendants, seek a declaration that his marriage was duly solemnized and an order for the restitution of his conjugal rights. The Court makes the declaration and order. C, claiming that B is his wife, then sues A for the recovery of B. The declaration made in the former suit is not binding upon C.

CHAPTER VII.

OF THE APPOINTMENT OF RECEIVERS.

Appointment of receivers discretionary.

44. The appointment of a receiver pending a suit is a matter resting in the discretion of the Court.

Reference to Code of Civil Procedure.

The mode and effect of his appointment, and his rights, powers, duties and liabilities, are regulated by the Code of Civil Procedure.[1]

CHAPTER VIII.

OF THE ENFORCEMENT OF PUBLIC DUTIES.

Power to order public servants and others to do certain specific acts.

45. Any of the High Courts of Judicature at Fort William, Madras and Bombay may make an order requiring any specific act to be done or forborne, within the local limits of its ordinary original civil jurisdiction, by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation or inferior Court of Judicature :

Provided—

(*a*) that an application for such order be made by some person whose property, franchise or personal right would be injured by the forbearing or doing (as the case may be) of the said specific act ;

(*b*) that such doing or forbearing is, under any law for the time being in force, clearly incumbent on such person or Court in his or its public character, or on such corporation in its corporate character ;

(*c*) that in the opinion of the High Court such doing or forbearing is consonant to right and justice ;

(*d*) that the applicant has no other specific and adequate legal remedy ; and

(*e*) that the remedy given by the order applied for will be complete.

[1] *See* now the Code of Civil Procedure, 1908 (Act V of 1908), General Acts, Vol. VI.]

Nothing in this section shall be deemed to authorize any High Court— Exemptions from such power.

(*f*) to make any order binding on the Secretary of State for India in Council, on the Governor General in Council, on the Governor of Madras in Council, on the Governor of Bombay in Council, or on the Lieutenant-Governor of Bengal;

(*g*) to make any order on any other servant of the Crown, as such, merely to enforce the satisfaction of a claim upon the Crown; or

(*h*) to make any order which is otherwise expressly excluded by any law for the time being in force.

46. Every application under section 45 must be founded on an affidavit of the person injured, stating his right in the matter in question, his demand of justice and the denial thereof; and the High Court may, in its discretion, make the order applied for absolute in the first instance, or refuse it, or grant a rule to show cause why the order applied for should not be made. Application how made. Procedure thereon.

If, in the last case, the person, Court or corporation complained of shows no sufficient cause, the High Court may first make an order in the alternative, either to do or forbear the act mentioned in the order, or to signify some reason to the contrary and make an answer thereto by such day as the High Court fixes in this behalf. Order in alternative.

47. If the person, Court or corporation to whom or to which such order is directed makes no answer, or makes an insufficient or a false answer, the High Court may then issue a peremptory order to do or forbear the act absolutely. Peremptory order.

48. Every order under this Chapter shall be executed, and may be appealed from, as if it were a decree made in the exercise of the ordinary original civil jurisdiction of the High Court. Execution of, and appeal from, orders.

49. The costs of all applications and orders under this Chapter shall be in the discretion of the High Court. Costs.

50. Neither the High Court nor any Judge thereof shall hereafter issue any writ of *mandamus*. Bar to issue of *mandamus*.

51. Each of the said High Courts shall, as soon as conveniently may be, frame rules[1] to regulate the procedure under this Chapter; and, until such rules are framed, the practice of such Court as to applications for and grants of writs of *mandamus* shall apply, so far as may be practicable, to applications and orders under this Chapter. Power to frame rules.

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[1] For rules made by the High Court of Bombay at Bombay under this section, *see* Bom. R. and O.

PART III.

OF PREVENTIVE RELIEF.

CHAPTER IX.

OF INJUNCTIONS GENERALLY.

Preventive relief how granted. Temporary injunctions.

52. Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.

53. Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court. They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure.[1]

Perpetual injunctions.

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit: the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

CHAPTER X.

OF PERPETUAL INJUNCTIONS.

Perpetual injunctions when granted.

54. Subject to the other provisions contained in, or referred to by, this Chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication.

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II of this Act.

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely):—

(*a*) where the defendant is trustee of the property for the plaintiff;

(*b*) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(*c*) where the invasion is such that pecuniary compensation would not afford adequate relief;

(*d*) where it is probable that pecuniary compensation cannot be got for the invasion;

(*e*) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

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[1] *See* now the Code of Civil Procedure, 1908 (Act V of 1908), General Acts, Vol. VI.

EXPLANATION.—For the purpose of this section a trademark is property.

Illustrations.

(*a*) A lets certain lands to B, and B contracts not to dig sand or gravel thereout. A may sue for an injunction to restrain B from digging in violation of his contract.

(*b*) A trustee threatens a breach of trust. His co-trustees, if any, should, and the beneficial owners may, sue for an injunction to prevent the breach.

(*c*) The directors of a public company are about to pay a dividend out of capital [1] or borrowed money. Any of the shareholders may sue for an injunction to restrain them[2].

(*d*) The directors of a fire and life-insurance company are about to engage in marine insurances. Any of the shareholders may sue for an injunction to restrain them.

(*e*) A, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.

(*f*) A, a trustee for B, is about to make an imprudent sale of a small part of the trust-property. B may sue for an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.

(*g*) A makes a settlement (not founded on marriage or other valuable consideration) of an estate on B and his children. A then contracts to sell the estate to C. B or any of his children may sue for an injunction to restrain the sale.

(*h*) In the course of A's employment as a vakil, certain papers belonging to his client, B, come into his possession. A threatens to make these papers public, or to communicate their contents to a stranger. B may sue for an injunction to restrain A from so doing.

(*i*) A is B's medical adviser. He demands money of B which B declines to pay. A then threatens to make known the effect of B's communications to him as a patient. This is contrary to A's duty, and B may sue for an injunction to restrain him from so doing.

(*j*) A, the owner of two adjoining houses, lets one to B and afterwards lets the other to C. A and C begin to make such alterations in the house let to C as will prevent the comfortable enjoyment of the house let to B. B may sue for an injunction to restrain them from so doing.

(*k*) A lets certain arable lands to B for purposes of husbandry, but without any express contract as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, B threatens to sow the lands with seed injurious thereto and requiring many years to eradicate. A may sue for an injunction to restrain B from sowing the lands in contravention of his implied contract to use them in a husbandlike manner.

(*l*) A, B and C are partners, the partnership being determinable at will. A threatens to do an act tending to the destruction of the partnership-property. B and C may, without seeking a dissolution of the partnership, sue for an injunction to restrain A from doing the act.

(*m*) A, a Hindu widow in possession of her deceased husband's property, commits destruction of the property without any cause sufficient to justify her in so doing. The heir-expectant may sue for an injunction to restrain her.

(*n*) A, B and C are members of an undivided Hindu family. A cuts timber growing on the family-property, and threatens to destroy part of the family-house and to sell some of the family-utensils. B and C may sue for an injunction to restrain him.

(*o*) A, the owner of certain houses in Calcutta, becomes insolvent. B buys them from the Official Assignee and enters into possession. A persists in trespassing on and damaging the houses, and B is thereby compelled, at considerable expense, to employ men to protect the possession. B may sue for an injunction to restrain further acts of trespass.

(*p*) The inhabitants of a village claim a right of way over A's land. In a suit against several of them, A obtains a declaratory decree that his land is subject to no such right. Afterwards each of the other villagers sues A for obstructing his alleged right of way over the land. A may sue for an injunction to restrain them.

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[1] As to payment of interest out of capital by Railway Companies during construction, *see* the Indian Railway Companies Act, 1895 (X of 1895), General Acts, Vol. IV.

[2] But *see* s. 3 of the Indian Railway Companies Act, 1895 (X of 1895), under which a Railway is permitted to pay interest on its paid-up share capital out of capital upon certain conditions and restrictions.

(*q*) A, in an administration-suit to which a creditor, B, is not a party, obtains a decree for the administration of C's assets. B proceeds against C's estate for his debt. A may sue for an injunction to restrain B.

(*r*) A and B are in possession of contiguous lands and of the mines underneath them.[1] A works his mine so as to extend under B's mine and threatens to remove certain pillars which help to support B's mine. B may sue for an injunction to restrain him from so doing.

(*s*) A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, B. B may sue for an injunction restraining A from making the noise.

(*t*) A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C may sue for an injunction to restrain the pollution.

(*u*) A infringes B's patent. If the Court is satisfied that the patent is valid and has been infringed, B may obtain an injunction to restrain the infringement.

(*v*) A pirates B's copyright. B may obtain an injunction to restrain the piracy, unless the work of which copyright is claimed is libellous or obscene.

(*w*) A improperly uses the trademark of B. B may obtain an injunction to restrain the user, provided that B's use of the trademark is honest.

(*x*) A, a tradesman, holds out B as his partner against the wish and without the authority of B. B may sue for an injunction to restrain A from so doing.

(*y*) A, a very eminent man, writes letters on family-topics to B. After the death of A and B, C, who is B's residuary legatee, proposes to make money by publishing A's letters. D, who is A's executor, has a property in the letters, and may sue for an injunction to restrain C from publishing them.

(*z*) A carries on a manufactory and B is his assistant. In the course of his business, A imparts to B a secret process of value. B afterwards demands money of A, threatening, in case of refusal, to disclose the process to C, a rival manufacturer. A may sue for an injunction to restrain B from disclosing the process.

Mandatory injunctions.

55. When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

Illustrations.

(*a*) A, by new buildings, obstructs lights to the access and use of which B has acquired a right under the Indian Limitation Act,[2] Part IV. B may obtain an injunction, not only to restrain A from going on with the buildings, but also to pull down so much of them as obstructs B's lights.

(*b*) A builds a house with eaves projecting over B's land. B may sue for an injunction to pull down so much of the eaves as so project.

(*c*) In the case put as illustration (*i*) to section 54, the Court may also order all written communications made by B, as patient, to A, as medical adviser, to be destroyed.

(*d*) In the case put as illustration (*y*) to section 54, the Court may also order A's letters to be destroyed.

(*e*) A threatens to publish statements concerning B which would be punishable under Chapter XXI of the Indian Penal Code.[3] The Court may grant an injunction to restrain the publication, even though it may be shown not to be injurious to B's property. XLV of 1860.

(*f*) A, being B's medical adviser, threatens to publish B's written communications with him, showing that B has led an immoral life. B may obtain an injunction to restrain the publication.

(*g*) In the cases put as illustrations (*v*) and (*w*) to section 54 and in illustrations (*e*) and (*f*) to this section, the Court may also order the copies produced by piracy, and the trade-marks, statements and communications, therein respectively mentioned, to be given up or destroyed.

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[1] As to the working of mines under land, the surface of which has been acquired by Government, *see* the Land Acquisition Mines Act, 1885 (XVIII of 1885), General Acts, Vol. III.

[2] *See* now Act IX of 1908, General Acts, Vol. VI.

[3] General Acts, Vol. I.

Injunction when refused.

56. An injunction cannot be granted—

(*a*) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(*b*) to stay proceedings in a Court not subordinate to that from which the injunction is sought;

(*c*) to restrain persons from applying to any legislative body;

(*d*) to interfere with the public duties of any department of the Government of India or the Local Government, or with the sovereign acts of a Foreign Government;

(*e*) to stay proceedings in any criminal matter;

(*f*) to prevent the breach of a contract the performance of which would not be specifically enforced;

(*g*) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(*h*) to prevent a continuing breach in which the applicant has acquiesced;

(*i*) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

(*j*) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court;

(*k*) where the applicant has no personal interest in the matter.

Illustrations.

(*a*) A seeks an injunction to restrain his partner, B, from receiving the partnership-debts and effects. It appears that A had improperly possessed himself of the books of the firm and refused B access to them. The Court will refuse the injunction.

(*b*) A manufactures and sells crucibles, designating them as "patent plumbago-crucibles," though, in fact, they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

(*c*) A sells an article called "Mexican Balm," stating that it is compounded of divers rare essences, and has sovereign medicinal qualities. B commences to sell a similar article to which he gives a name and description such as to lead people into the belief that they are buying A's Mexican Balm. A sues B for an injunction to restrain the sale. B shows that A's Mexican Balm consists of nothing but scented hog's lard. A's use of his description is not an honest one and he cannot obtain an injunction.

Injunction to perform negative agreement.

57. Notwithstanding section 56, clause (*f*), where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement: provided that the applicant has not failed to perform the contract so far as it is binding on him.

Illustrations.

(*a*) A contracts to sell to B for Rs. 1,000 the good-will of a certain business unconnected with business-premises, and further agrees not to carry on that business in Calcutta. B pays A the Rs. 1,000 but A carries on the business in Calcutta. The Court cannot compel A to send his customers to B, but B may obtain an injunction restraining A from carrying on the business in Calcutta.

(*b*) A contracts to sell to B the good-will of a business. A then sets up a similar business close by B's shop and solicits his old customers to deal with him. This is contrary to his implied contract, and B may obtain an injunction to restrain A from soliciting the customers, and from doing any act whereby their good-will may be withdrawn from B.

(*c*) A contracts with B to sing for twelve months at B's theatre and not to sing in public elsewhere. B cannot obtain specific performance of the contract to sing, but he is entitled to an injunction restraining A from singing at any other place of public entertainment.

(*d*) B contracts with A that he will serve him faithfully for twelve months as a clerk. A is not entitled to a decree for specific performance of this contract. But he is entitled to an injunction restraining B from serving a rival house as clerk.

(*e*) A contracts with B that, in consideration of Rs. 1,000 to be paid to him by B on a day fixed, he will not set up a certain business within a specified distance. B fails to pay the money. A cannot be restrained from carrying on the business within the specified distance.

SCHEDULE.

[ENACTMENTS REPEALED.]

[*Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*]

ACT No. IV OF 1877.[1]

[*28th February 1877.*]

An Act to regulate the procedure and increase the jurisdiction of the Courts of Magistrates in the Presidency-towns.

Preamble.

WHEREAS it is expedient to consolidate and amend the law regulating the procedure of the Courts of Magistrates in the Presidency-towns and to increase the jurisdiction of such Courts; It is hereby enacted as follows:—

1 to 56. [*Rep. by the Code of Criminal Procedure, 1882 (Act X of 1882).*]

Fees for summonses and warrants.

57. A fee of eight annas shall be paid for every summons or warrant issued by a Presidency Magistrate, except in the case of a summons to attend and give evidence or to produce documents, in which case there shall be paid a fee of four annas:

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[1] Short title, "The Presidency Magistrates (Court-fees) Act, 1877." *See* the Indian Short Titles Act, 1897 (XIV of 1897).

For the Statement of Objects and Reasons, *see* Gazette of India, 1874, Pt. V, p. 83; for the Report of the Select Committee, *see ibid*, 1875, Pt. V, p. 39, and 1876, Pt. V, p. 37; for the discussions in Council, *see ibid*, 1874, Supplement, p. 418; *ibid*, 1876, Supplement, pp. 193 and 709; *ibid*, 1877, Supplement, p. 497.

Provided that such Magistrate may in any case remit any such fee, if he is satisfied that the complainant is unable to pay the same, and shall remit it when the complaint is made by a public servant in the execution of his duty. Power to remit fees.

58 to end. [*Rep. by the Code of Criminal Procedure, 1882 (Act X of 1882.)*]

ACT No. XI OF 1877.[1]

[*31st May 1877.*]

An Act to facilitate the admission of Military Lunatics into Asylums.

WHEREAS it is expedient to facilitate the admission of European military lunatics into asylums,[2] * * * * *; It is hereby enacted as follows :— Preamble.

1. This Act may be called the Military Lunatics Act, 1877. Short title.

It extends to the whole of British India[3] and, so far as regards subjects of Her Majesty, to the dominions of Native Princes and States in India in alliance with Her Majesty; Local extent.

And it shall come into force on the passing thereof. Commencement.

2. [*Repeal of Act XXI of 1872.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

3. Whenever any European officer, warrant-officer, non-commissioned officer, soldier or other person subject to the provisions of the [4][Army Act] has been declared a lunatic in accordance with the provisions of the [5][Military Regulations in force for the time being][6], * * * * * * and it Procedure in respect of European officer or soldier declared lunatic.

44 & 45 Vict., c. 58.

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[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1877, Pt. V, p. 123; for discussions in Council, *see ibid*, Supplement, pp. 511, 806 and 1567.

[2] The words "and to amend the law now in force with regard to the admission thereto of Native Military Lunatics" in the preamble were repealed by Act I of 1901.

[3] The Act has been declared, under the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the following Scheduled Districts in the Chutiá Nágpúr Division, namely :—

the Districts of Hazáribágh, Lohárdaga [including the present District of Palamau, separated in 1894] and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum—*see* Gazette of India, 1881, Pt. I, p. 504. Lohárdaga is now called the Ranchi District, Calcutta Gazette, 1899, Pt. I, p. 44.

The Act has been declared in force in—

British Baluchistan—*see* the British Baluchistan Laws Regulation, 1890 (I of 1890), s. 3, Bal. Code;

Upper Burma generally (except the Shan States)—by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (1) and Sch. I.

[4] These words were substituted for the words "Act for punishing mutiny and desertion, and for the better payment of the Army and their quarters for the time being in force" by the Repealing and Amending (Army) Act, 1894 (XIII of 1894), General Acts, Vol. IV.

[5] These words were substituted for the words "military regulations of the Presidency to which he belongs" by the Repealing and Amending (Army) Act, 1894 (XIII of 1894), General Acts, Vol. IV.

[6] The words "and has been ordered to be forwarded to any one of the Presidency-towns" were repealed by the Repealing and Amending Act, 1903 (I of 1903), s. 4 and Sch. III, General Acts, Vol. V.

appears to [1][the Principal Medical Officer of Her Majesty's Forces in India, the Surgeon General with the Government of India, the Surgeon General with the Government of Madras, the Surgeon General with the Government of Bombay, or the Principal Medical Officer of the Command to which the said lunatic belongs], that it is inexpedient that he should be removed to England, or that he should be detained in military custody, until he can be conveniently sent to England, [2][such Principal Medical Officer or Surgeon General] may, if he think fit, make an order under his hand for the reception of the said lunatic into the Lunatic Asylum at Bhowanipur, Madras or Bombay, or such other lunatic asylum as may be duly authorized[3] for the purpose by the Governor General in Council;

and the officer in charge of such asylum shall receive the lunatic in the asylum, and detain him therein until he is discharged therefrom, in accordance with the [4][military regulations] in force for the time being, or until [5][such Principal Medical Officer or Surgeon General] applies for his transfer to the military authorities in view to his removal to England.

[*Sections 4, 5 and 6.*] *Rep. by Act I of 1901.*

Procedure for discharge of military lunatic.

7. Whenever it appears to the officer in charge of a lunatic asylum that the discharge of a military lunatic,[6] * * * *, is necessary either on account of his recovery, or for any other purpose, such person shall be brought before the visitors of the asylum, and on the visitors recording their opinion that the discharge should be made, the general officer commanding the*[7] district or force, or other officer authorized to order the admission of military lunatics into asylums, shall forthwith direct him to be discharged, and such discharge shall take place in accordance with the [4][military regulations] in force for the time being.

Payment of expenses of lunatic.

8. The Paymaster of the military circle within which any such asylum is situate shall pay to the officer in charge of such asylum the expense of the lodging, maintenance, clothing and medicine of every lunatic,[6] * * * * received and detained under this Act.

9. [*Legalization of past receptions in asylums.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

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[1] These words were substituted for the words "one of the Surgeons General, either of the British Forces or of the Indian Medical Service according to the Presidency and the service to which the said lunatic belongs" by the Repealing and Amending (Army) Act, 1894 (XIII of 1894), *ibid.*

[2] These words were substituted for the words "such Surgeon General" by the Repealing and Amending (Army) Act, 1894 (XIII of 1894), *ibid.*

[3] For order adding the Rangoon Lunatic Asylum to this list, *see* Notification No. 668, Gazette of India, 1895, Pt. I, p. 579.

[4] These words were substituted for the words "local military regulations" by the Repealing and Amending (Army) Act, 1894 (XIII of 1894), General Acts, Vol. IV.

[5] These words were substituted for the words "the Surgeon General" by the Repealing and Amending (Army) Act, 1894 (XIII of 1894), *ibid.*

[6] The words "whether European or Native" in sections 7 and 8 were repealed by Act I of 1901.

[7] The word "division" was repealed by the Repealing and Amending (Army) Act, 1894 (XIII of 1894).

THE OPIUM ACT, 1878.

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SCHEDULE. [*Repealed.*]

ACT No. I OF 1878.[1]

[*9th January 1878.*]

An Act to amend the law relating to Opium.

WHEREAS it is expedient to amend the law relating to opium; it is hereby enacted as follows:—

Short title. Local extent.

1. This Act may be called the Opium Act, 1878.

It shall extend to such local areas[2] as the Governor General in Council may, by notification in the Gazette of India, from time to time direct;

Commencement.

And it shall come into force in each of such areas on such day as the Governor General in Council in like manner directs in this behalf.

2. [*Repeal and amendment of enactments.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891), and the Repealing and Amending Act, 1894 (IV of 1894).*

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

"opium" includes also poppy-heads, preparations or admixtures of opium, and intoxicating drugs prepared from the poppy:

"Magistrate"[3] means, in the Presidency-towns, a Presidency Magistrate and elsewhere, a Magistrate of the first class or (when specially empowered by

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[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1877, Pt. V, p. 645; for Proceedings in Council, *see ibid*, Supplement, pp. 3015 and 3030; *ibid*, 1878, pp. 53 and 80.

The Act has been declared in force in the Santhal Parganas by the Santhal Parganas Settlement Regulation, 1872 (III of 1872), s. 3, as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899), Ben. Code; in British Baluchistan by the Baluchistan Laws Regulation, 1890 (I of 1890), s. 3, Bal. Code; and in the Angul District by the Angul District Regulation, 1894 (I of 1894), s. 3, Ben. Code.

It has been declared in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (*l*), Sch. I, Bur. Code.

For Opium directions under the Act and rules thereunder by the Financial Commissioner, Burma, in supersession of existing orders, *see* Burma Gazette, 1904, Pt. IV, p. 352.

[2] It has been extended by notification in the Gazette of India to the following local areas from the date specified against each:—

(1) Ajmer-Merwara, from 2nd August, 1879, *see ibid*, p. 466, *see* also Aj. R. and O.;
(2) Assam, from 1st April, 1879, *see ibid*, p. 259;
(3) Bengal, from 21st August, 1878, *see ibid*, p. 526;
(4) Bombay Presidency, from 1st April, 1878, *see ibid*, p. 231;
(5) Central Provinces, from 28th June, 1879, *see ibid*, p. 441;
(6) Coorg, from 1st April, 1882, *see ibid*, 1882, Pt. I, p. 135;
(7) Lower Burma, from 29th March, 1879, *see ibid*, 1879, Pt. I, p. 75;
(8) Madras Presidency, from 1st July, 1880, *see ibid*, p. 513;
(9) the Punjab, from 1st April, 1880, *see ibid*, 1880, Pt. I, p. 16; and
(10) United Provinces of Agra and Oudh, from 2nd February, 1878, *see* Gazette of India, 1878, Pt. I, p. 68;

Ss. 3-5 and 9-16 have been extended under s. 10 (1) of the Burma Laws Act, 1898 (XIII of 1898), to the Myelat, *see* Burma Gazette, 1900, Pt. I, p. 477, and the whole Act, with the exception of ss. 6-8 and 22-25, has been extended to the Taunggyi Civil Station of the Southern Shan States and the Lashio Civil Station of the Northern Shan States, respectively, with certain modifications, *see* Burma Gazette, 1900, Pt. I, pp. 478 and 799, respectively.

[3] *Cf.* definition in the last clause of s. 3 of the Code of Criminal Procedure, 1898 (V of 1898), General Acts, Vol. V.

the Local Government to try cases under this Act) a[1] Magistrate of the second class :

"import" means to bring into the territories administered by any Local Government from sea, or from foreign territory, or from a territory administered by any other Local Government :

"export" means to take out of the territories administered by any Local Government to sea, or to any foreign territory, or to any territory administered by another Local Government :

"transport" means to remove from one place to another within the territories administered by the same Local Government.

Prohibition of poppy-cultivation and possession, etc., of opium.

4. Except as permitted by this Act, or by any other enactment relating to opium for the time being in force, or by rules framed under this Act or under any such enactment, no one shall—

(*a*) cultivate the poppy ;

(*b*) manufacture opium ;

(*c*) possess opium ;

(*d*) transport opium ;

(*e*) import or export opium ; or

(*f*) sell opium.

Power to make rules to permit such matters.

5. The Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by notification in the local Gazette, make rules[2] consistent with this Act, to permit absolutely, or subject to the

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[1] For notification empowering Magistrates of the second class to try cases under the Act, *see* Fort St. George Gazette, 1880, Pt. I, p. 472.

[2] For rules made under this section for—

(1) Ajmer-Merwara, *see* Gazette of India, 1904, Pt. II, p. 339 ; *ibid*, 1906, Pt. II, p. 1452 ;

(2) Assam, *see* Notification No. 699R., dated the 21st February 1899, Assam Gazette, 1899, Pt. II, p. 86 ;

(3) British Baluchistan, *see* Gazette of India, 1898, Pt. II, p. 124 ;

(4) Bengal, *see* Ben. R. and O. ;

(5) Bombay, *see* Bom. R. and O. and Bombay Government Gazette, 1897, Pt. I, p. 1084, and *ibi* , 1901, Pt. I, p. 148, and *ibid*, 1903, Pt. I, p. 134 ;

(6) Burma, *see* Burma Excise Manual, Ed. 1895 ;

(7) Central Provinces, *see* Central Provinces Gazette, 1898, Pt. III, p. 86, and *ibid*, 1901, p. 380 ;

(8) Coorg, *see* Coorg District Gazette Extraordinary, dated 15th February, 1898, p. 2, *ibid*, 1907, Pt. I, p. 17 ; for notification bringing morphia within the purview of the opium rules, *see* Coorg District Gazette, 1906, Pt. I, p. 179 ;

(9) Madras, *see* Fort St. George Gazette, 1903, Pt. I, p. 371 ; *ibid*, 1903, Pt. II, p. 963 ;

(10) Punjab, *see* Punjab Gazette, 1900, Pt. I, p. 892 ; *ibid*, 1901, Pt. I, p. 532 ; *ibid*, Pt. III, pp. 1150 and 1151 ; *ibid*, 1907, Pt. I, p. 502 ;

(11) United Provinces of Agra and Oudh, *see* North-Western Provinces and Oudh Gazette, 1898, Pt. I, p. 562, amended North-Western Provinces and Oudh Gazette, 1901, Pt. I, p. 211 ; *ibid*, 1901, Pt. I, p. 528 ; *ibid*, 1904, Pt. I, p. 629 ;

(12) the North-West Frontier Province, *see* Gazette of India, 1903, Pt. II, p. 882 ; *ibid*, 1907, Pt. II, pp. 1106 & 1107 ;

(13) the Myelat in conjunction with ss. 3, 12, 13 and 14, *see* Burma Gazette, 1900, Pt. I, p. 477 ;

(14) the civil stations of Taunggyi and Lashio in Upper Burma, *see* Burma Gazette, 1900, Pt. I, pp. 478 and 799, respectively.

payment of duty or to any other conditions, and to regulate, within the whole or any specified part of the territories administered by such Government, all or any of the following matters :—

(*a*) the cultivation of the poppy ;
(*b*) the manufacture of opium ;
(*c*) the possession of opium ;
(*d*) the transport of opium ;
(*e*) the importation or exportation of opium ; and
(*f*) the sale of opium and the farm of duties leviable on the sale of opium by retail :

Provided that no duty shall be levied under any such rule on any opium imported and on which a duty is imposed by or under the law relating to sea-customs[1] for the time being in force or under section 6.

Duty on opium imported by land.

6. The Governor General in Council may, from time to time, by[2] notification in the Gazette of India, impose such duty as he thinks fit on opium or on any kind of opium imported by land into British India or into any specified part thereof, and may alter or abolish any duty so imposed.

Warehousing opium.

7. The Governor General in Council may, by order notified in the Gazette of India,—

(*a*) authorize any Local Government to[3] establish warehouses, for opium legally imported into, or intended to be exported from, the territories administered by such Local Government, and
(*b*) cancel any such order.

So long as such order remains in force, the Local Government may, by notification published in the official Gazette,—

(*c*) declare any place to be a warehouse for all or any opium legally imported, whether before or after the payment of any duty leviable thereon, into the territories administered by such Government, or into any specified part thereof, intended to be exported thence, and
(*d*) cancel any such declaration.

Power to make rules relating to warehouses.

An order under clause (*b*) shall cancel all previous declarations under clause (*c*) of this section relating to places in the territories to which such order refers.

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[1] *See* the Sea Customs Act, 1878 (VIII of 1878) (Chapter VIII), *infra*.

[2] For notifications issued under this section, *see* Gazette of India, 1894, Pt. I, p. 657 ; *ibid*, 1895, p. 834 ; *ibid*, 1896, pp. 146 and 570 ; and *ibid*, 1900, p. 454 (exempting poppy-heads imported into the Punjab).

As to duty on opium imported in the Punjab, *see* list of notifications on p. 81 of the Punj. R. and O.

As to rates at which opium shall be sold in the United Provinces at Government Treasuries, *see* North-Western Provinces and Oudh Gazette, 1893, Pt. I, p. 495.

In Ajmer-Merwara in respect of Malwa opium not being poppy-heads, *see ibid*, 1904, Pt. I, p. 238, and imposing duty on opium imported into the Punjab *viâ* Ajmer, *see* Aj. R. and O.

[3] For notification authorizing the Government of Bombay to establish a warehouse under this section, *see* Bom. R. and O.

So long as such declaration remains in force, the owner of all such opium shall be bound to deposit it in such warehouse.

Power to make rules relating to warehouses.

8. The Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by notification in the local Gazette, make rules[1] consistent with this Act to regulate the safe custody of opium warehoused under section 7 ; the levy of fees for such warehousing ; the removal of such opium for sale or exportation ; and the manner in which it shall be disposed of, if any duty or fees leviable on it be not paid within twelve months from the date of warehousing the same.

Penalty for illegal cultivation of poppy, etc.

9. Any person who, in contravention of this Act, or of rules made and notified under section 5 or section 8,—

(*a*) cultivates the poppy, or

(*b*) manufactures opium, or

(*c*) possesses opium, or

(*d*) transportsopium, or

(*e*) imports or exports opium, or

(*f*) sells opium, or

(*g*) omits to warehouse opium, or removes or does any act in respect of warehoused opium,

and any person who otherwise contravenes any such rule,

shall, on conviction before a Magistrate, be punished for each such offence with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both ;

and, where a fine is imposed, the convicting Magistrate shall direct the offender to be imprisoned in default of payment of the fine for a term which may extend to six months, and such imprisonment shall be in excess of any other imprisonment to which he may have been sentenced.

Presumption in prosecutions under section 9.

10. In prosecutions under section 9, it shall be presumed, until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act.

Confiscation of opium.

11. In any case in which an offence under section 9 has been committed,—

(*a*) the poppy so cultivated,

(*b*) the opium in respect of which any offence under the same section has been committed,

(*c*) where in the case of an offence under clause (*d*) or (*e*) of the same section, the offender is transporting, importing or exporting any

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[1] For rules issued under this section, *see* Bombay Local Rules and Orders, Ed. 1896, p. lvi, and Bombay Government Gazette, 1907, Pt. I, p. 811.

opium exceeding the quantity (if any) which he is permitted to transport, import or export, as the case may be, the whole of the opium which he is transporting, importing or exporting,

(*d*) where, in the case of an offence under clause (*f*) of the same section, the offender has in his possession any opium other than the opium in respect of which the offence has been committed, the whole of such other opium,

shall be liable to confiscation.

The vessels, packages and coverings in which any opium liable to confiscation under this section is found, and the other contents (if any) of the vessel or package in which such opium may be concealed and the animals and conveyances used in carrying it, shall likewise be liable to confiscation.

Order of confiscation by whom to be made.

12. When the offender is convicted, or when the person is charged with an offence in respect of any opium is acquitted but the Magistrate decides that the opium is liable to confiscation, such confiscation may be ordered by the Magistrate.

Whenever confiscation is authorized by this Act, the officer ordering it may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation, such fine as the officer thinks fit.

When an offence against this Act has been committed, but the offender is not known or cannot be found, or when opium not in the possession of any person cannot be satisfactorily accounted for, the case shall be enquired into and determined by the Collector of the district or Deputy Commissioner, or by any other officer authorized by the Local Government in this behalf, either personally or in right of his office, who may order such confiscation: Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the persons (if any) claiming any right thereto, and the evidence (if any) which they produce in support of their claims.

Power to make rules regarding disposal of things confiscated, and rewards.

13. The Local Government may, with the previous sanction of the Governor General in Council, from time to time, by notification in the local Gazette, make rules [1] consistent with this Act to regulate—

(*a*) the disposal of all things confiscated under this Act; and

(*b*) the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act.

Power to enter, arrest and seize, on

14. Any officer of any of the departments of Excise, Police, Customs, Salt, Opium or Revenue superior in rank to a peon or constable, who may in right

[1] *See* List of rules noted under s. 5, *supra*, which were made also under the powers conferred by this section.

of his office be authorized by the [1]Local Government in this behalf, and who has reason to believe, from personal knowledge or from information given by any person and taken down in writing, that opium liable to confiscation under this Act is manufactured, kept or concealed in any building, vessel or enclosed place, may, between sunrise and sunset,— Power to enter and search on information that opium is unlawfully kept in any enclosed place.

(*a*) enter into any such building, vessel or place;

(*b*) in case of resistance, break open any door and remove any other obstacle to such entry;

(*c*) seize such opium and all materials used in the manufacture thereof and any other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium; and

(*d*) detain and search, and, if he think proper, arrest, any person whom he has reason to believe to be guilty of any offence relating to such opium under this or any other law for the time being in force.

15. Any officer of any of the said departments may— Power to seize opium in open places. Power to detain, search and arrest.

(*a*) seize, in any open place or in transit, any opium or other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium;

(*b*) detain and search any person whom he has reason to believe to be guilty of any offence against this or any other such law, and, if such person has opium in his possession, arrest him and any other persons in his company.

16. All searches under section 14 or section 15 shall be made in accordance with the provisions of the Code of Criminal Procedure.[2] Searches how made.

17. The officers of the several departments mentioned in section 14 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act. Officers to assist each other.

18. Any officer of any of the said departments who, without reasonable ground of suspicion, enters or searches, or causes to be entered or searched, any building, vessel or place, Vexatious entries, searches, seizures and arrests.

or vexatiously and unnecessarily seizes the property of any person on the

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[1] For notification conferring powers on officials of the class referred to in—
(1) Ajmer-Merwara, *see* Aj. R. and O.;
(2) Assam, *see* Assam Manual of Local Rules and Orders, p. xxiv;
(3) Bombay, *see* Bom. R. and O. and Bombay Government Gazette, 1898, Pt. I, p. 23; *ibid*, 1901, pp. 974 and 2460; *ibid*, 1902, p. 1561; *ibid*, 1903, p. 1254, and *ibid*, 1907, Pt. I, p. 1170;
(4) Burma, *see* Burma Gazette, 1895, Pt. I, p. 287;
(5) Madras, *see* Mad. R. and O.;
(6) Punjab, *see* Punjab Gazette, 1881, Pt. I, p. 452;
(7) Province of Agra, *see* N. W. P. and Oudh Gazette, 1878, Pt. I, p. 148;
(8) N.-W. Frontier Province, on officers of the Border Military Police, *see* Gazette of India, 1904, Pt. II, p. 85.

[2] *See* now the Code of Criminal Procedure, 1898 (V of 1898), General Acts, Vol. V.

pretence of seizing or searching for any opium or other thing liable to confiscation under this Act,

or vexatiously and unnecessarily detains, searches or arrests any person,

shall, for every such offence, be punished with fine not exceeding five hundred rupees.

ssue of arrants.

19. The Collector of the district, Deputy Commissioner or other officer authorized[1] by the Local Government in this behalf, either personally or in right of his office, or a Magistrate, may issue his warrant for the arrest of any person whom he has reason to believe to have committed an offence relating to opium, or for the search, whether by day or night, of any building or vessel or place in which he has reason to believe opium liable to confiscation to be kept or concealed.

All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure.[2]

Disposal of person arrested or thing seized.

20. Every person arrested, and thing seized, under section 14 or section 15, shall be forwarded without delay to the officer in charge of the nearest police-station; and every person arrested and thing seized under section 19 shall be forwarded without delay to the officer by whom the warrant was issued.

Every officer to whom any person or thing is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or thing.

Report of arrests and seizures.

21. Whenever any officer makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

Procedure in case of illegal poppy cultivation.

22. In the case of alleged illegal cultivation of the poppy, the crop shall not be removed, but shall, pending the disposal of the case, be attached by an officer superior in rank to a peon or constable, who may in right of his office be authorized[1] by the Local Government in this behalf; and such officer shall require the cultivator to give bail in a reasonable amount (to be fixed by such officer) for his appearance before the Magistrate by whom the case is to be disposed of, and such cultivator shall not be arrested unless within a reasonable time he fails to give such bail:

Provided that, wherever [3]Act No. XIII of 1857 (*An Act to consolidate and amend the law relating to the cultivation of the Poppy and the manufacture of Opium in the Presidency of Fort William in Bengal*) or any part thereof, is in force, nothing in this section shall apply to such cultivation.

Recovery of arrears of fees, duties, etc.

23. Any arrear of any fee or duty imposed under this Act or any rule made hereunder,

and any arrear due from any farmer of opium-revenue,

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1 *See* foot-note to s. 14, *supra*.

2 *See* now the Code of Criminal Procedure, 1898 (V of 1898), General Acts, Vol. V.

3 U. P. Code, C. P. Code, and Ben. Code.

may be recovered from the person primarily liable to pay the same to the Government or from his surety (if any) as if it were an arrear of land-revenue.

Farmer may apply to Collector or other officer to recover amount due to him by license.

24. When any amount is due to a farmer of opium-revenue from his licensee, in respect of a license, such farmer may make an application to the Collector of the district, Deputy Commissioner or other officer authorized[1] by the Local Government in this behalf, praying such officer to recover such amount on behalf of the applicant; and, on receiving such application, such Collector, Deputy Commissioner or other officer may in his discretion recover such amount as if it were an [2]arrear of land-revenue, and shall pay any amount so recovered to the applicant:

Provided that the execution of any process issued by such Collector, [3][Deputy Commissioner] or other officer for the recovery of such amount shall be stayed if the licensee institutes a suit in the Civil Court to try the demand of the farmer, and furnishes security to the satisfaction of such officer for the payment of the amount which such Court may adjudge to be due from him to such farmer:

Provided also that nothing contained in this section or done thereunder shall affect the right of any farmer of opium-revenue to recover by suit in the Civil Court or otherwise any amount due to him from such licensee.

Recovery of penalties due under bond.

25. When any person, in compliance with any rule made hereunder, gives a bond for the performance of any duty or act, such duty or act shall be deemed to be a public duty, or an act in which the public are interested, as the case may be, within the meaning of the [4]Indian Contract Act, 1872, section 74; and, upon breach of the condition of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land-revenue.

IX of 1872.

SCHEDULE.

[ENACTMENTS REPEALED.]

Repealed by Act XII of 1891.

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1 *See* foot-note to s. 14, *supra*.

2 *See* the Revenue Recovery Act, 1890 (I of 1890), General Acts, Vol. IV.

3 "Deputy Commissioner" was substituted for "Deputy Collector" by the Repealing and Amending Act, 1891 (XII of 1891), Sch. II, General Acts, Vol. IV.

4 *Supra*.

ACT No. VI OF 1878.[1]

[*13th February 1878.*]

An Act to amend the law relating to Treasure-trove.

Preamble. WHEREAS it is expedient to amend the law relating to treasure-trove; It is hereby enacted as follows:—

Preliminary.

Short title. **1.** This Act may be called the Indian Treasure-trove Act, 1878.

Extent. It extends to the whole of British India.

Commencement. And it shall come into force at once.

2. [*Repeal of enactments.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

Interpretation-clause. **3.** In this Act—

"Treasure." "treasure" means anything of any value hidden in the soil, or in anything affixed thereto:

"Collector." "Collector" means (1) any Revenue-officer in independent charge of a district, and (2) any officer appointed by the Local Government to perform the functions of a Collector under this Act.[2]

Owner. When any person is entitled, under any reservation in an instrument of transfer of any land or thing affixed thereto to treasure in such land or thing, he shall, for the purposes of this Act, be deemed to be the owner of such land or thing.

Procedure on finding Treasure.

Notice by finder of treasure. **4.** Whenever any treasure exceeding in amount or value ten rupees is found, the finder shall, as soon as practicable, give to the Collector notice in writing—

(*a*) of the nature and amount or approximate value of such treasure;

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[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1877, Pt. V, p. 1463; for discussions in Council, *see ibid.*, Supplement, pp. 1288 and 1326; *ibid.*, 1878, pp. 207 and 287.

This Act has been declared in force in—

Angul and the Khondmals by the Angul District Regulation, 1894 (I of 1894), s. 3;

the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872), s. 3, as amended by the Santhál Parganas Justice and Laws Regulation, 1899 (III of 1899), s. 3, Ben. Code;

Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (1) and Sch. I, Bur. Code.

It has also been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), General Acts, Vol. II, to be in force in the following portions of the de-regulationized Scheduled Districts of the Chutiá Nágpur Division, namely:—

the Districts of Házaribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum—*see* Gazette of India, 1881, Pt. I, p. 504. The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894; Lohárdaga is now called the Ranchi District; Cal. Gazette, 1899, Pt. I, p. 44.

[2] In Bombay, Mamlatdars have been appointed to perform the functions of Collectors under the Act, *see* Bom. R. and O.

(*b*) of the place in which it was found;

(*c*) of the date of the finding;

and either deposit the treasure in the nearest Government treasury, or give the Collector such security as the Collector thinks fit, to produce the treasure at such time and place as he may from time to time require.

Notification requiring claimants to appear.

5. On receiving a notice under section 4, the Collector shall, after making such enquiry (if any) as he thinks fit, take the following steps (namely):—

(*a*) he shall publish a notification in such manner as the Local Government from time to time prescribes in this behalf, to the effect that on a certain date (*mentioning it*) certain treasure (*mentioning its nature, amount and approximate value*) was found in a certain place (*mentioning it*); and requiring all persons claiming the treasure, or any part thereof, to appear personally or by agent before the Collector on a day and at a place therein mentioned, such day not being earlier than four months, or later than six months, after the date of the publication of such notification;

(*b*) when the place in which the treasure appears to the Collector to have been found was at the date of the finding in the possession of some person other than the finder, the Collector shall also serve on such person a special notice in writing to the same effect.

Forfeiture of right on failure to appear.

6. Any person having any right to such treasure or any part thereof, as owner of the place in which it was found or otherwise, and not appearing as required by the notification issued under section 5, shall forfeit such right.

Matters to be enquired into and determined by the Collector.

7. On the day notified under section 5, the Collector shall cause the treasure to be produced before him, and shall enquire as to and determine—

(*a*) the person by whom, the place in which, and the circumstances under which, such treasure was found; and

(*b*) as far as is possible, the person by whom, and the circumstances under which, such treasure was hidden.

Time to be allowed for suit by person claiming the treasure.

8. If, upon an enquiry made under section 7, the Collector sees reason to believe that the treasure was hidden within one hundred years before the date of the finding, by a person appearing as required by the said notification and claiming such treasure, or by some other person under whom such person claims, the Collector shall make an order adjourning the hearing of the case for such period as he deems sufficient, to allow of a suit being instituted in the Civil Court by the claimant to establish his right.

When treasure may be declared ownerless.

9. If upon such enquiry the Collector sees no reason to believe that the treasure was so hidden; or

if, where a period is fixed under section 8, no suit is instituted as aforesaid within such period to the knowledge of the Collector; or

if such suit is instituted within such period and the plaintiff's claim is finally rejected;

the Collector may declare the treasure to be ownerless.

Appeal against such declaration.

Any person aggrieved by a declaration made under this section may appeal against the same within two months from the date thereof to the Chief Controlling Revenue-authority.

Subject to such appeal, every such declaration shall be final and conclusive.

Proceedings subsequent to declaration.

10. When a declaration has been made in respect of any treasure under section 9, such treasure shall, in accordance with the provisions hereinafter contained, either be delivered to the finder thereof, or be divided between him and the owner of the place in which it has been found in manner hereinafter provided.

When no other person claims as owner of place treasure to be given to finder.

11. When a declaration has been made in respect of any treasure as aforesaid, and no person other than the finder of such treasure has appeared as required by the notification published under section 5 and claimed a share of the treasure as owner of the place in which it has been found, the Collector shall deliver such treasure to the finder thereof.

When only one such person claims and his claim is not disputed, treasure to be divided,

12. When a declaration has been made as aforesaid in respect of any treasure, and only one person other than the finder of such treasure has so appeared and claimed, and the claim of such person is not disputed by the finder, the Collector shall proceed to divide the treasure between the finder and the person so claiming according to the following rule (namely):—

If the finder and the person so claiming have not entered into any agreement then in force as to the disposal of the treasure, three-fourths of the treasure shall be allotted to such finder and the residue to such person. If such finder and such person have entered into any such agreement, the treasure shall be disposed of in accordance therewith :

Provided that the Collector may, in any case, if he thinks fit, instead of dividing any treasure as directed by this section,—

(*a*) allot to either party the whole or more than his share of such treasure, on such party paying to the Collector for the other party such sum of money as the Collector may fix as the equivalent of the share of such other party, or of the excess so allotted, as the case may be ; or

(*b*) sell such treasure or any portion thereof by public auction, and divide the sale-proceeds between the parties according to the rule hereinbefore prescribed :

Provided also that, when the Collector has by his declaration under section 9 rejected any claim made under this Act by any person other than the said finder or person claiming as owner of the place in which the treasure was found, such division shall not be made until after the expiration of two months without an appeal having been presented under section 9 by the person whose

claim has been so rejected, or, when an appeal has been so presented, after such appeal has been dismissed.

When the Collector has made a division under this section, he shall deliver to the parties the portions of such treasure, or the money in lieu thereof to which they are respectively entitled under such division. and shares to be delivered to parties.

13. When a declaration has been made as aforesaid in respect of any treasure, and two or more persons have appeared as aforesaid and each of them claimed as owner of the place where such treasure was found, or the right of any person who has so appeared and claimed is disputed by the finder of such treasure, the Collector shall retain such treasure and shall make an order staying his proceedings with a view to the matter being enquired into and determined by a Civil Court. In case of dispute as to ownership of place, proceedings to be stayed.

14. Any person who has so appeared and claimed may, within one month from the date of such order, institute a suit in the Civil Court to obtain a decree declaring his right ; and in every such suit the finder of the treasure and all persons disputing such claim before the Collector shall be made defendants. Settlement of such dispute,

15. If any such suit is instituted and the plaintiff's claim is finally established therein, the Collector shall, subject to the provisions of section 12, divide the treasure between him and the finder. and division thereupon.

If no such suit is instituted as aforesaid, or if the claims of the plaintiffs in all such suits are finally rejected, the Collector shall deliver the treasure to the finder.

16. The Collector may, at any time after making a declaration under section 9, and before delivering or dividing the treasure as hereinbefore provided, declare by writing under his hand his intention to acquire on behalf of the Government the treasure, or any specified portion thereof, by payment to the persons entitled thereto of a sum equal to the value of the materials of such treasure or portion, together with one-fifth of such value, and may place such sum in deposit in his treasury to the credit of such persons ; and thereupon such treasure or portion shall be deemed to be the property of Government, and the money so deposited shall be dealt with, as far as may be, as if it were such treasure or portion. Power to acquire the treasure on behalf of Government.

17. No decision passed or act done by the Collector under this Act shall be called in question by any Civil Court, and no suit or other proceeding shall lie against him for anything done in good faith in exercise of the powers hereby conferred. Decision of Collector final, and no suit to lie against him for acts done *bonâ fide*.

18. A Collector making any enquiry under this Act may exercise any power conferred by the Code of Civil Procedure[1] on a Civil Court for the trial of suits. Collector to exercise powers of Civil Court.

[1] *See* now Act V of 1908 ; General Acts, Vol. VI.

(Procedure on finding Treasure. Penalties.)

Power to make rules.

19. The Local Government may, from time to time, make rules[1] consistent with this Act to regulate proceedings hereunder.

Such rules shall, on being published in the local Gazette, have the force of law.

Penalties.

Penalty on finder failing to give notice, etc.

20. If the finder of any treasure fails to give the notice, or does not either make the deposit or give the security, required by section 4, or alters or attempts to alter such treasure so as to conceal its identity, the share of such treasure, or the money in lieu thereof to which he would otherwise be entitled, shall vest in Her Majesty,

and he shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

Penalty on owner abetting offence under section 20.

21. If the owner of the place in which any treasure is found abets, within the meaning of the Indian Penal Code,[2] any offence under section 20, the share of such treasure, or the money in lieu thereof to which he would otherwise be entitled, shall vest in Her Majesty, XLV of 1860.

and he shall, on conviction before a Magistrate, be punished with imprisonment which may extend to six months, or with fine, or with both.

SCHEDULE.

[*Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*]

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1 For rules made under the powers conferred by this section in—
Bombay—*see* Bom. R. and O.;
Burma—*see* Bur. R. M.;
Madras—*see* Mad. R. and O.;
Bengal—*see* Calcutta Gazette, 1908, Pt. I, p. 637;
Punjab—*see* Punjab Govt. Gazette, 1908, Pt. I., p. 356;
United Provinces—*see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 55;
Central Provinces—*see* C. P. R. and O.;
Assam—*see* Assam List of Local Rules and Orders, Ed. 1893, p. 107;
Ajmer-Merwara—*see* Gazette of India, 1907, Pt. II, p. 1743.

2 General Acts, Vol. I.

THE INDIAN FOREST ACT, 1878.

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SCHEDULE.—ENACTMENTS REPEALED.

ACT No. VII OF 1878.[1]

[*8th March 1878.*]

An Act to amend the law relating to forests, the transit of forest-produce and the duty leviable on timber.

WHEREAS it is expedient to amend the law relating to forests, the transit of forest-produce and the duty leviable on timber; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called the Indian Forest Act, 1878. Short title.

It shall come into force at once in the territories respectively administered by the Governor of Bombay in Council, the Lieutenant-Governors of the Lower Provinces, the North-Western Provinces, and the Punjab (except the district of Hazara),[2] and the Chief Commissioners of Oudh, the Central Provinces and Assam.[3] Commencement.

[1] For Statement of Objects and Reasons, *see* Gazette of India, 1877, Pt. V, p. 11; for the first Report of the Select Committee, *see ibid*, Pt. V, p. 400; for Proceedings in Council, *see ibid*, Supplement, pp. 86, 121, 2744, and *ibid*, 1878, pp. 326 and 437.

Act VII of 1878 has been declared in force in the Sonthal Parganas by Reg. III of 1872, s. 3, as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (III of 1899); in Angul and the Khondmals by the Angul District Regulation, 1894 (Reg. I of 1894), s. 3; and in the Chittagong Hill Tracts by the Chittagong Hill Tracts Regulation, 1900 (I of 1900): for the Regulations *see* Ben. Code.

The Act has been declared, by notification, under s. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the following Scheduled Districts, in the Chota Nagpur Division, namely: the Districts of Házáribágh, Lohárdaga and Mánbhum and Pargana Dhálbhum and the Kolhán in the District of Singbhum—*see* Gazette of India, 1881, Pt. I, p. 504. The District of Lohárdaga included at that time the present District of Palamau, separated in 1894. It is now called the Ranchi District; *see* Calcutta Gazette, 1899, Pt. I, p. 44.

[2] For the forest law in force in the Hazara District, *see* the Hazara Forest Regulation, 1893 (VI of 1893), P. and N.-W. Code.

[3] Act VII of 1878 was repealed in Assam from the 1st April, 1892—*see* the Assam Forest Regulation, 1891 (VII of 1891), ss. 1 (3) and 2 (1), E. B. and A. Code.

Extension.

And any other Local Government may, from time to time, with the previous sanction of the Governor General in Council, extend,[1] by notification in the local official Gazette, this Act to all or any of the territories for the time being under its administration.

Repeal of enactments.

On and from the date on which this Act comes into force in any of the said territories, the enactments mentioned in the schedule hereto annexed shall be repealed in such territories. But all rules made under or validated by any of the said enactments and in force at the date of such repeal shall, so far as they are consistent with this Act, be deemed to have been made and published hereunder.

Interpretation-clause.

2. In this Act, unless there be something repugnant in the subject or context,—

"Forest-officer" means any person whom the Governor General in Council, or the Local Government or any officer empowered by the Governor General in Council or the Local Government in this [2]behalf, may from time to time appoint by name, or as holding an office, to carry out all or any of the purposes of this Act, or to do anything required by this Act or any rule made under this Act to be done by a Forest-officer:

[3] "tree" includes palms, bamboos, stumps, brushwood and canes:

[4] "timber" includes trees when they have fallen or have been felled, and all wood, whether cut up or fashioned or hollowed out for any purpose or not

[4] "forest-produce" includes—

(*a*) the following, whether found in, or brought from, a forest or not, that is to say:—timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers and myrabolams, and

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[1] Act VII of 1878 has been extended under this power to the Province of Coorg—*see* Coorg District Gazette, 1887, Pt. I, p. 640.

For Madras, Ajmere-Merwara, Burma, British Baluchistan and Assam there are special forest laws—*see* Madras Forest Act, 1882 (V of 1882), Mad. Code; the Ajmere Forest Regulation, 1874 (VI of 1874), Aj. Code; the Burma Forest Act, 1902 (IV of 1902); the British Baluchistan Forest Regulation, 1890 (V of 1890), Bal. Code; the Assam Forest Regulation, 1891 (VII of 1891), E. B. and A. Code.

In the Punjab, the Land Preservation (Chos) Act, 1900 (Punjab Act II of 1900), is to be read with and taken as part of this Act, *see* P. and N.-W. Code. For rules for the conservancy of forests and jungles in the hill districts of the Punjab territories, *see* Appendix to *ibid.* These rules are also in force in the North-West Frontier Province, *see* s. 4 and second schedule to Reg. VII of 1901, *ibid.*

[2] For notification appointing Forest-officers for the Santhal Parganas and empowering them to compound for offences mentioned in s. 67 within certain specified areas, *see* Calcutta Gazette, 1901, Pt. I, p. 28; in the North-West Frontier Province for certain specified forests for all purposes of the Act, *see* Gazette of India, 1904, Pt. II, p. 113;

in the Punjab, for Rawalpindi Forest Division, for the purpose of carrying out the duties of Forest-officers, *see* Punjab Gazette, 1907, Pt. I, p. 32.

[3] This definition of "tree" was substituted for the original by the Forest Act, 1890 (V of 1890), s. 2 (1), General Acts, Vol. IV. The original clause only referred to bamboos, stumps and brushwood.

[4] These definitions of "timber" and "forest-produce" were substituted for the original definitions by the Forest Act, 1890 (V of 1890), s. 2 (2) and (3), respectively, *ibid.*

(*b*) the following when found in, or brought from, a forest, that is to say :—

(*i*) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned of trees,

(*ii*) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,

(*iii*) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and

(*iv*) peat, surface soil, rock and minerals (including limestone, laterite, mineral oils, and all products of mines or quarries) :

" forest-offence " means an offence punishable under this Act, or under any rule made under this Act :

[1] " cattle " includes elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids :

" river " includes streams, canals, creeks and other channels, natural or artificial.

CHAPTER II.

OF RESERVED FORESTS.[2]

Power to reserve forests.

3. The Local Government may from time to time constitute any forest-land or waste-land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.

Notification by Local Government.

4. Whenever it is proposed to constitute any land a reserved forest, the Local Government may publish a notification in the local official Gazette—

(*a*) declaring that it is proposed to constitute such land a reserved forest :

[3] (*b*) specifying, as nearly as possible, the situation and limits of such land ; and

(*c*) appointing an officer (hereinafter called " the Forest-settlement-officer ") to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or

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[1] *See* similar definition in Cattle-trespass Act, 1871 (I of 1871), *supra*.

[2] As to the application of provisions relating to reserved forests (1) to village-forests, *see* s. 27, last paragraph ; (2) to forests, and lands not the property of the Government, *see* ss. 36, 38 ; (3) to forests, waste-lands or produce the joint property of the Government and other persons, *see* s. 79, *infra*

[3] This clause was substituted for the original cl. (*b*) by the Forest Act, 1890 (V of 1890), s. 3, General Acts, Vol. IV. The original clause ran as follows :— "(*b*) specifying the limits of such forest ; and ".

over any land comprised within such limits, or in or over any forest produce, and to deal with the same as provided in this Chapter.

Explanation.—For the purpose of clause (*b*) of this section, it shall be sufficient to describe the limits of the forest by roads, rivers, ridges or other well-known or readily intelligible boundaries.

The officer appointed under clause (*c*) of this section shall ordinarily be a person not holding any forest-office except that of Forest-settlement-officer.

Nothing in this section shall prevent the Local Government from appointing any number of officers not exceeding three, not more than one of whom shall be a person holding any forest-office except as aforesaid, to perform the duties of a Forest-settlement-officer under this Act.

Bar of accrual of forest-rights.

5. During the interval between the publication of such notification and the date fixed by the notification under section 19, no right shall be acquired in or over the land comprised in such notification except by succession or under a grant or contract in writing made or entered into by or on behalf of Government or some person in whom such right was vested when the former notification was issued; and no fresh clearings for cultivation or for any other purpose shall be made in such land [1][except in accordance with rules prescribed by the Local Government].

Proclamation by Forest-settlement-officer.

6. When a notification has been issued under section 4, the Forest-settlement-officer shall publish in the language of the country, in every town and village in the neighbourhood of the land comprised therein, a proclamation—

[2] (*a*) specifying, as nearly as possible, the situation and limits of the proposed forest;

(*b*) explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest; and

(*c*) fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right mentioned in section 4 or 5 either to present to such officer within such period a written notice specifying, or to appear before him and state, the nature of such right and the amount and particulars of the compensation (if any) claimed in respect thereof.

Inquiry by Forest-settlement-officer.

7. The Forest-settlement-officer shall take down in writing all statements made under section 6, and shall, at some convenient place, inquire into all claims duly preferred under that section, and the existence of any rights mentioned in section 4 or 5 and not claimed under section 6 so far as the same may be ascertainable from the records of Government and the evidence of any persons likely to be acquainted with the same.

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[1] These words were added by the Forest Act, 1890 (V of 1890), s. 4, General Acts, Vol. IV.

[2] This clause was substituted for the original cl. (*a*) by Act V of 1890, s. 5. The clause ran:—"(*a*) specifying the limits of the proposed forest".

8. For the purpose of such inquiry, the Forest-settlement-officer may exercise the following powers, that is to say :— Powers of Forest-settlement-officer.

(*a*) power to enter, by himself or any officer authorized by him for the purpose, upon any land, and to survey, demarcate and make a map of the same ; and

(*b*) the powers of a Civil Court in the trial of suits.

9. Rights in respect of which no claim has been preferred under section 6, and of the existence of which no knowledge has been acquired by inquiry under section 7, shall be extinguished, unless, before the notification under section 19 is published, the person claiming them satisfies the Forest-settlement-officer that he had sufficient cause for not preferring such claim within the period fixed under section 6. Extinction of rights.

[1]**9A.** (*1*) In the case of a claim relating to the practice of shifting cultivation, the Forest-settlement-officer shall record a statement setting forth the particulars of the claim and of any local rule or order under which the practice is allowed or regulated, and submit the statement to the Local Government, together with his opinion as to whether the practice should be permitted or prohibited wholly or in part. Treatment of claims relating to practice of shifting cultivation.

(*2*) On receipt of the statement and opinion the Local Government may make an order permitting or prohibiting the practice wholly or in part.

(*3*) If such practice is permitted wholly or in part, the Forest-settlement-officer may arrange for its exercise—

(*a*) by altering the limits of the land under settlement so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient for the purposes of the claimants, or

(*b*) by causing certain portions of the land under settlement to be separately demarcated, and giving permission to the claimants to practise shifting cultivation therein under such conditions as he may prescribe.

All arrangements made under this sub-section shall be subject to the previous sanction of the Local Government.

(*4*) The practice of shifting cultivation shall in all cases be deemed a privilege subject to control, restriction and abolition by the Local Government.

10. In the case of a claim to a right in or over any land, other than a right of way or pasture, or to forest-produce or a water-course, the Forest-settlement-officer shall pass an order admitting or rejecting the same in whole or in part. Power to acqure land over which right is claimed.

If such claim is admitted in whole or in part, the Forest-settlement-officer shall either (1) exclude such land from the limits of the proposed forest; or (2) come to an agreement with the owner thereof for the surrender of his

[1] S. 9A was inserted by Act V of 1890, s. 6, General Acts, Vol. IV.

rights ; or (3) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1870.[1] X of 1870.

For the purpose of so acquiring such land—

(*a*) the Forest-settlement-officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1870 [1] ;

(*b*) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under section 9 of that Act [2] ;

(*c*) the provisions of the preceding sections of that Act shall be deemed to have been complied with ; and

(*d*) the Collector, with the consent of the claimant, or the Court, with the consent of both parties, may award compensation in land, or partly in land and partly in money.

Order on claims to rights of pasture or to forest-produce.

11. In the case of a claim to rights of pasture or to forest-produce, the Forest-settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

Record to be made by Forest-settlement-officer.

12. The Forest-settlement-officer, when passing any order under section 11, shall record, so far as may be practicable,—

(*a*) the name, father's name, caste, residence and occupation of the person claiming the right ;

(*b*) the designation, position and area of all fields or groups of fields (if any), and the designation and position of all buildings (if any) in respect of which the exercise of such rights is claimed.

Record where he admits claim.

13. If the Forest-settlement-officer admits in whole or in part any claim under section 11, he shall also record the extent to which the claim is so admitted, specifying the number and description of the cattle which the claimant is from time to time entitled to graze in the forest, the season during which such pasture is permitted, the quantity of timber and other forest-produce which he is from time to time authorized to take or receive, or such other particulars as the case may require. He shall also record whether the timber or other forest-produce obtained by the exercise of the rights claimed may be sold or bartered.

Exercise of rights admitted.

14. After making such record, the Forest-settlement-officer shall, to the best of his ability, and having due regard to the maintenance of the reserved forest in respect of which the claim is made, pass such orders as will ensure the continued exercise of the rights so admitted. For this purpose the Forest-settlement-officer may—

(*a*) set out some other forest-tract of sufficient extent, and in a locality reasonably convenient, for the purposes of such claimants, and

[1] *See* now the Land Acquisition Act, 1894 (I of 1894), General Acts, Vol. IV.

[2] This reference to s. 9 of Act X of 1870 should now be read as referring to s. 9 of Act I of 1894—*see* s. 2 of the latter Act, *ibid.*

record an order conferring upon them a right of pasture or to forest-produce (as the case may be) to the extent so admitted ; or

(*b*) so alter the limits of the proposed forest as to exclude forest-land of sufficient extent, and in a locality reasonably convenient, for the purposes of the claimants ; or

(*c*) record an order, continuing to such claimants a right of pasture or to forest-produce (as the case may be) to the extent so admitted, at such seasons, within such portions of the proposed forest and under such rules, as may from time to time be prescribed by the Local Government.

Commutation of rights.

15. In case the Forest-settlement-officer finds it impossible, having due regard to the maintenance of the reserved forest, to make such settlement under section 14 as shall ensure the continued exercise of the said rights to the extent so admitted, he shall (subject to such rules as the Local Government may from time to time prescribe in this behalf) commute such rights, either by the payment to such persons of a sum of money in lieu thereof, or by the grant of land, or in such other manner as he thinks fit.

Appeal from order passed under section 10, 11, 14 or 15.

16. Any person who has made a claim under this Act, or any Forest-officer or other person generally or specially empowered by the Local Government in this behalf, may, within three months from the date of the order passed on such claim by the Forest-settlement-officer under section 10, 11, 14 or 15, present an appeal from such order to such officer of the Revenue Department, of rank not lower than that of a Collector or Deputy Commissioner, as the Local Government may from time to time, by notification in the local official Gazette, appoint by name, or as holding an office, to hear appeals from such orders :

Provided that, if the Local Government establishes (as it is hereby empowered to do) a Court (hereinafter called the Forest Court) composed of three persons to be appointed by the Local Government, such appeals shall be presented to such Court.

Appeal under section 16.

17. Every appeal under section 16 shall be made by petition in writing, and may be delivered to the Forest-settlement-officer, who shall forward it without delay to the authority competent to hear the same.

If the appeal be to an officer appointed under section 16, it shall be heard in the manner prescribed for the time being for the hearing of appeals in matters relating to land-revenue.

If the appeal be to the Forest Court, the Court shall fix a day and a convenient place in the neighbourhood of the proposed forest for hearing the appeal, and shall give notice thereof to the parties, and shall hear such appeal accordingly.

The order passed thereon by such officer or Court, or by the majority of the members of such Court, shall be final, subject to revision by the Local Government.

(*Chapter II.—Of Reserved Forests.*)

Pleaders.

18. The Local Government, or any person who has made a claim under this Act, may appoint any person to appear, plead and act, on its or his behalf before the Forest-settlement-officer, or the appellate officer or Court, in the course of an inquiry or appeal under this Act.

Notification declaring forest reserved.

19. When the following events have occurred (namely) :—

(*a*) the period fixed under section 6 for preferring claims has elapsed, and all claims (if any) made within such period have been disposed of by the Forest-settlement-officer : and

(*b*) if such claims have been made, and the period limited by section 16 for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the appellate officer or Court ; and

(*c*) all lands (if any) to be included in the proposed forest, which the Forest-settlement-officer has, under section 10, elected to acquire under the Land Acquisition Act, 1870 [1], have become vested in the Government under section 16 of that Act, X of 1870.

the Local Government may publish a notification in the local official Gazette, specifying definitely, according to boundary-marks erected or otherwise, the limits of the forest which it is intended to reserve, and declaring the same to be reserved from a date fixed by such notification.

From the date so fixed such forest shall be deemed to be a reserved forest.

Publication of translation of such notification in neighbourhood of forest.

20. The Forest-officer shall, before the date fixed by such notification, cause a translation thereof into the language of the country to be published in every town and village in the neighbourhood of the forest.

Power to revise arrangement made under section 14 or 17.

21. The Local Government may, within five years from the publication of any notification under section 19, revise any arrangement made under section 14 or 17, and may, for this purpose, rescind or modify any order made under section 14 or 17, and direct that any one of the proceedings specified in section 14 be taken in lieu of any other of such proceedings, or that the rights admitted under section 11 be commuted under section 15.

No right acquired over reserved forest, except as here provided.

22. No right of any description shall be acquired in or over a reserved forest, except by succession or under a grant or contract in writing made by or on behalf of the Government or of some person in whom such right was vested when the notification under section 19 was issued.

Rights not to be alienated without sanction.

23. Notwithstanding anything contained in section 22, no right continued under section 14, clause (*c*), shall be alienated by way of grant, sale, lease, mortgage or otherwise, without the sanction of the Local Government :

Provided that, when any such right is appendant to any land or house, it may be sold or otherwise alienated with such land or house.

[1] *Read now* the Land Acquisition Act, 1894 (I of 1894), General Acts, Vol. IV.

No timber or other forest-produce obtained in exercise of any such right shall be sold or bartered except to such extent as may have been admitted in the order recorded under section 13.

Power to stop ways and water-courses in reserved forests.

24. The Forest-officer may from time to time, with the previous sanction of the Local Government or of any officer duly authorized in that behalf, stop any public or private way or water-course in a reserved forest:

Provided that a substitute for the way or water-course so stopped, which the Local Government deems to be reasonably convenient, already exists, or has been provided or constructed by the Forest-officer in lieu thereof.

Acts prohibited in such forests.

25. Any person who—

(*a*) makes any fresh clearing prohibited by section 5, or

[1] [(*b*) sets fire to a reserved forest, or, in contravention of any rules [2] made by the Local Government, kindles any fire, or leaves any fire burning, in such manner as to endanger such a forest;]

or who, in a reserved forest,—

(*c*) kindles, keeps or carries any fire except at such seasons as the Forest-officer may from time to time notify in this behalf;

(*d*) trespasses or pastures cattle, or permits cattle to trespass;

(*e*) causes any damage by negligence in felling any tree or cutting or dragging any timber;

(*f*) fells, girdles, lops, taps or burns any tree or strips off the bark or leaves from, or otherwise damages, the same;

(*g*) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest-produce;

(*h*) clears or breaks up any land for cultivation or any other purpose; or,

[3](*i*) in contravention of any rules which the Local Government may from time to time prescribe, [4] [kills or catches elephants,] hunts, shoots, fishes, poisons water or sets traps or snares,

shall be punished with imprisonment for a term which may extend to six months, or with fine not exceeding five hundred rupees, or with both, in

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[1] This clause was substituted for the original cl. (*b*) by the Forest Act, 1890 (V of 1890), s. 7, *see* General Acts, Vol. IV.

[2] For rules made under this clause for—

(1) Bombay, *see* Bom. R. and O.;

(2) Central Provinces, *see* C. P. R. and O.; and

(3) United Provinces, *see* p. 59 of the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894.

[3] For notification prohibiting the killing, injuring or capturing of any rhinoceri in reserved forests in the Jalpaiguri and Darjiling Districts, *see* Calcutta Gazette, 1899, Pt. I, p. 1368. For rules under this clause in conjunction with s. 75 (*d*) as to hunting, shooting, fishing, etc., in reserved forests in the United Provinces, *see* United Provinces Gazette, 1906, Pt. I, p. 651; *ibid*, for Central Provinces, *see* C. P. Gazette, 1907, Pt. I, p. 678.

[4] These words are repealed in the United Provinces, the Central Provinces and Coorg, and in local areas to which the Elephants Preservation Act, 1879 (VI of 1879), is extended—*see* s. 2, General Acts, Vol. III.

addition to such compensation for damage done to the forest as the convicting Court may direct to be paid.

Nothing in this section shall be deemed to prohibit (*a*) any act done by permission in writing of the Forest-officer, or under any rule made by the Local Government; or (*b*) the exercise of any right continued under section 14, clause (*c*), or created by grant or contract in writing made by or on behalf of Government under section 22.

Whenever fire is caused wilfully or by gross negligence in a reserved forest, the Local Government may (notwithstanding that any penalty has been inflicted under this section) direct that in such forest or any portion thereof the exercise of all rights of pasture or to forest-produce shall be suspended for such period as it thinks fit.

Power to declare forest no longer reserved.

26. The Local Government may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, direct that from a date fixed by such notification[1], any forest or any portion thereof reserved under this Act shall cease to be a reserved forest.

From the date so fixed, such forest or portion shall cease to be reserved; but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.

CHAPTER III.

OF VILLAGE-FORESTS.

Formation of village-forests.

27. The Local Government may from time to time assign to any village-community the rights of Government to or over any land which has been constituted a reserved forest, and may cancel such assignment. All forests, so assigned shall be called village-forests.

The Local Government may from time to time make rules for regulating the management of village-forests, prescribing the conditions under which the community to which any such assignment is made may be provided with timber or other forest-produce or pasture, and their duties for the protection and improvement of such forest.

All provisions of this Act relating to reserved forests shall (so far as they are consistent with the rules so made) apply to village-forests.

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[1] For notifications under this section, *see* Punjab Gazette, 1907, Pt. I, pp. 3 and 8 to 15.

CHAPTER IV.

OF PROTECTED FORESTS.[1]

"Protected forests."

28. The Local Government may from time to time, by notification in the local official Gazette, declare the provisions of this Chapter applicable to any forest-land or waste-land which is not included in a reserved forest, but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled.

The forest-land and waste-lands comprised in any such notification shall be called a "protected forest."

No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the Local Government thinks sufficient.

Every such record shall be presumed to be correct until the contrary is proved:

Provided that, if in the case of any forest-land or waste-land, the Local Government thinks that such inquiry and record are necessary, but that they will occupy such length of time as that the rights of Government will in the meantime be endangered, the Local Government may (pending such inquiry and record) declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

Power to issue notification—

29. The Local Government may from time to time, by notification in the local official Gazette,—

reserving trees,

(*a*) declare any class of trees in a protected forest, or any trees in any such forest, to be reserved from a date fixed by such notification;

closing forest,

(*b*)[2] declare that a portion of such forest be closed for such term, not exceeding twenty years, as the Local Government thinks fit, and that the rights of private persons (if any) over such portion shall be suspended during such term: Provided that the remainder of such forest be sufficient, and in a locality reasonably convenient, for the due exercise of the rights suspended in the portion so closed;

prohibiting collection of forest-produce, etc., and breaking up or clearing of land.

(*c*) prohibit, from a date fixed as aforesaid, the quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing process, or removal, of any forest-produce, in any such forest, and the breaking up or clearing for cultivation, for

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[1] As to the application of provisions relating to protected forests (1) to land not the property of the Government, *see* s. 38; (2) to forests, waste-land or produce the joint property of the Government and other persons, *see* s. 79, *infra*.

[2] For a notification under this clause, *see* United Provinces Gazette, 1906, Pt. I, p. 997.

building, for herding cattle or for any other purpose, any land in any such forest; and

(*d*) alter or cancel such declaration or prohibition.

Publication of translation of such notification in neighbourhood.

30. The Collector or Deputy Commissioner of the district shall cause a translation into the language of the district, of every notification issued under section 29, to be affixed in a conspicuous place in every town and village in the neighbourhood of the forest comprised in the notification.

Power to make rules for protected forests.

[1]**31.** The Local Government may from time to time make rules to regulate the following matters :—

(*a*) the cutting, sawing, conversion and removal of trees and timber, and the collection, manufacture and removal of forest-produce, from protected forests;

(*b*) the granting of licenses to the inhabitants of towns and villages in the vicinity of protected forests to take trees, timber or other forest-produce for their own use, and the production and return of such licenses by such persons;

(*c*) the granting of licenses to persons felling or removing trees or timber or other forest-produce from such forests for the purposes of trade, and the production and return of such licenses by such persons;

(*d*) the payments (if any) to be made by the persons mentioned in clauses (*b*) and (*c*) of this section, for permission to cut such trees, or to collect and remove such timber or other forest-produce;

(*e*) the other payments, if any, to be made by them in respect of such trees, timber and produce, and the places where such payment shall be made;

(*f*) the examination of forest-produce passing out of such forests;

(*g*) the clearing and breaking up of land for cultivation or other purposes in such forests;

(*h*) the protection from fire of timber lying in such forests and of trees reserved under section 29;

(*i*) the cutting of grass and pasturing of cattle in such forests;

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[1] For rules under this section for—

(1) Bombay, *see* Bom. R. and O.;

(2) for protected Forests of Naini Tal, Ranikhet and Lalitpur, *see* p. 62 of the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894;

(3) for rules made by the Government of Bengal under this section and s. 41 for the protected forests in the Santhal Parganas, *see* Calcutta Gazette, 1901, Pt. I, p. 571; in the Sunderbans, *see* Calcutta Gazette, 1906, Pt. I, p. 1973; in the Angul Protected Forests, *see* Calcutta Gazette, 1901, Pt. I, p. 879;

(4) or protected forests in the Punjab, *see* Punjab Gazette, 1904, Pt. I, p. 76.

(*j*) [1] [killing or catching elephants,] hunting, shooting, fishing, poisoning water and setting traps or snares in such forests ;

(*k*) the protection and management of any portion of a forest closed under section 29 ;

(*l*) the exercise of rights referred to in section 28.

Penalties for acts in contravention of notification under section 29.

32. Any person who commits any of the following offences :—

(*a*) fells, girdles, lops, taps or burns any tree reserved under section 29, or strips off the bark or leaves from, or otherwise damages, any such tree ;

(*b*) contrary to any prohibition under section 29, quarries any stone, or burns any lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest-produce ;

(*c*) contrary to any prohibition under section 29, breaks up or clears for cultivation or any other purpose any land in any protected forest ;

(*d*) sets fire to such forest, or kindles a fire without taking all reasonable precautions to prevent its spreading to any trees reserved under section 29, whether standing, fallen or felled, or to any closed portion of such forest ;

(*e*) leaves burning any fire kindled by him in the vicinity of any such trees or closed portion ;

(*f*) fells any tree or drags any timber so as to damage any tree reserved as aforesaid ;

(*g*) permits cattle to damage any such tree ;

(*h*) infringes any rule made under section 31 ;

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

[2] [Whenever fire is caused wilfully or by gross negligence in a protected forest, the Local Government may (notwithstanding that any penalty has been inflicted under this section) direct that in such forest or any portion thereof the exercise of any right of pasture or to forest-produce shall be supended for such period as it thinks fit.]

Nothing in this Chapter to prohibit acts done in certain cases.

33. Nothing in this Chapter shall be deemed to prohibit any act done with the permission in writing of the Forest-officer, or in accordance with rules made under section 31, or (except as regards any portion of a forest closed under section 29) [3][or any rights the exercise of which has been suspended under section 32] in the exercise of any right recorded under section 28.

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[1] These words are repealed in the United Provinces, the Central Provinces and Coorg and in local areas to which the Elephants Preservation Act, 1879, is extended—*see* Act VI of 1879, s. 2, General Acts, Vol. III.

[2] This clause was added to the section by s. 2 of the Indian Forest (Amendment) Act, 1901 (V of 1901), General Acts, Vol. V.

[3] These words were inserted by s. 3 of Act V of 1901, *ibid.*

(*Chapter V.—Forests under Conservancy-administration when this Act comes into force. Chapter VI.—Of the Control over Forests and Lands not being the Property of Government.*)

CHAPTER V.

FORESTS UNDER CONSERVANCY-ADMINISTRATION WHEN THIS ACT COMES INTO FORCE.

Forests under conservancy-administration when this Act comes into force.

34. Within twelve months from the date on which this Act comes into force in the territories administered by any Local Government, such Government shall, after consideration of the rights of the Government and private persons in all forest-lands or waste-lands then under its executive control for purposes of forest-conservancy, determine which of such lands [if any] can according to justice, equity and good conscience, be classed as reserved forests or protected forests under this Act, and declare, by notification in the local official Gazette, any lands so classed to be reserved or protected forests, as the case may be :

Provided that such declaration shall not affect any rights of the Government or private persons to or over any land or forest-produce in any such forest, which have, previous to the date of such declaration, been inquired into, settled and recorded in a manner which the Local Government thinks sufficient :

Provided also that if any such rights have not on such date been so inquired into, settled and recorded, the Local Government shall direct that the same shall be inquired into, settled and recorded in the manner provided by this Act for reserved or protected forests, as the case may be ; and, until such inquiry, settlement and record have been completed, no such declaration shall abridge or affect such rights.

CHAPTER VI.

OF THE CONTROL OVER FORESTS AND LANDS NOT BEING THE PROPERTY OF GOVERNMENT.

Protection of forests for special purposes.

35. The Local Government may from time to time, by notification in the local official Gazette, regulate or prohibit in any forest or waste-land—

(*a*) the breaking up or clearing of land for cultivation ;

(*b*) the pasturing of cattle ;

(*c*) the firing or clearing of the vegetation ;

when such regulation or prohibition appears necessary for any of the following purposes :—

first, for protection against storms, winds, rolling stones, floods and avalanches ;

second, for the preservation of the soil on the ridges and slopes and in the valleys of hilly tracts, the prevention of landslips and of the formation of ravines and torrents, and the protection of land against erosion, or the deposit thereon of sand, stones or gravel;

third, for the maintenance of a water-supply in springs, rivers and tanks;

fourth, for the protection of roads, bridges, railways and other lines of communication;

fifth, for the preservation of the public health;

and may alter or cancel such notification.

The Local Government may, for any such purpose, construct at its own expense, in or upon any forest or waste-land, such work as it thinks fit:

Provided that no such notification shall be made or work begun until after the issue of a notice to the owner of such forest or land, calling on him to show cause, within a reasonable period to be specified in such notice, why such notification should not be made or work constructed, and until his objections (if any) and any evidence he may produce in support of the same have been heard by an officer duly appointed in that behalf and have been considered by the Local Government.

Power to assume management of forests.

36. In case of neglect of, or wilful disobedience to, any regulation or prohibition under section 35, or if the purposes of any work to be constructed under that section so require, the Local Government may, after notice in writing to the owner of such forest or land and after considering his objections (if any), place the same under the control of a Forest-officer, and may declare that all or any of the provisions of this Act relating to reserved forests shall apply to such forest or land.

The net profits (if any) arising from the management of such forest or land shall be paid to the said proprietor.

Expropriation of forests in certain cases.

37. In any case under this Chapter in which the Local Government considers that, in lieu of placing the forest or land under the control of a Forest-officer, the same should be acquired for public purposes, the Local Government may proceed to acquire it in the manner prescribed by the Land Acquisition Act, 1870 [1].

X of 1870.

The owner of any forest or land comprised in any notification under section 35 may, at any time not less than three or more than twelve years from the date thereof, require that such forest or land shall be acquired for public purposes, and the Local Government shall acquire such forest or land accordingly.

Protection of forests at request of owners.

38. The owner of any land or, if there be more than one owner thereof, the owners of shares therein amounting in the aggregate to at least two-thirds

[1] *Read now* the Land Acquisition Act, 1894 (I of 1894), General Acts, Vol. IV.

thereof may, with a view to the formation or conservation of forests thereon represent in writing to the Collector or Deputy Commissioner their desire—

(*a*) that such land be managed on their behalf by the Forest-officer as a reserved or a protected forest on such terms as may be mutually agreed upon; or

(*b*) that all or any of the provisions of this Act be applied to such land.

In either case, the Local Government may, by notification in the local official Gazette, apply to such land such provisions of this Act as it thinks suitable to the circumstances thereof and as may be desired by the applicants.

Any such notification may be altered or cancelled by a like notification.

CHAPTER VII.

OF THE DUTY ON TIMBER AND OTHER FOREST-PRODUCE.[1]

Power to impose duty on timber and other forest-produce.

39. The Local Government, with the previous sanction of the Governor General in Council, may levy a duty in such manner, at such places and at such rates as it may from time to time prescribe by notification in the local official Gazette on all timber [2] [or other forest-produce]—

(*a*) which is produced in British India, and in respect of which the Government has any right;

(*b*) which is brought from any place beyond the frontier of British India.

Power to fix value for *ad valorem* duty.

In every case in which such duty is directed to be levied *ad valorem*, the Local Government may, with the like sanction, from time to time fix, by like notification, the value on which such duty shall be assessed.

All duties on timber [2] [or other forest-produce], which, at the time when this Act comes into force in any territory, are levied therein under the authority of the Local Government, shall be deemed to be and to have been duly levied under the provisions of this Act.

Limit not to apply to purchase-money or royalty.

40. Nothing in this Chapter shall be deemed to limit the amount (if any) chargeable as purchase-money or royalty on any timber or other forest-produce, although the same is levied on such timber or produce while in transit, in the same manner as duty is levied.

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[1] This heading was substituted for the original heading by the Forest Act, 1890 (V of 1890), s. 8 (1), General Acts, Vol. IV.

[2] These words were inserted by Act V of 1890, s. 8 (2), *ibid.*

CHAPTER VIII.

OF THE CONTROL OF TIMBER AND OTHER FOREST-PRODUCE IN TRANSIT.

Power to make rules to regulate transit of forest-produce.

41. The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber and other forest-produce in transit by land or water, is vested in the Local Government, and it may from time to time make rules to regulate the transit of all timber and other forest-produce.

[1] Such rules may (among other matters)—

(*a*) prescribe the routes by which alone timber [2] [or other] forest-produce may be imported, exported or moved, into, from or within, British India;

(*b*) prohibit the import and export or moving of such timber or other produce without a pass from an officer duly authorized to issue the same, or otherwise than in accordance with the conditions of such pass;

(*c*) provide for the issue, production and return of such passes and for the payment of fees therefor;

(*d*) provide for the stoppage, reporting, examination and marking of timber or other forest-produce in transit, in respect of which there is reason to believe that any money is payable to Government on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon, or to which it is desirable for the purposes of this Act to affix a mark;

(*e*) provide for the establishment and regulation of depôts to which such timber or other produce shall be taken by those in charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it; and the conditions under

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[1] For rules made under this section for—
(1) Bombay, *see* Bom. R. and O.;
(2) Central Provinces, *see* C. P. R. and O.;
(3) United Provinces, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 66.

For rules made by the Government of Bengal to regulate the transit of timber on the Gandak River, so far as it flows within the jurisdiction of that Government, *see* Calcutta Gazette, 1898, Pt. I, p. 141.

For rules made for the Santhal Parganas as to the management of protected forests under this section in conjunction with s. 31, *see* Calcutta Gazette, 1901, Pt. I, p. 67.

For River Rules for the Chittagong Hill Tracts, *see* Calcutta Gazette, 1881, Pt. I, p. 930; *ibid*, 1882, Pt. I, p. 667; *ibid*, 1885, Pt. I, p. 941; *ibid*, 1898, Pt. I, p. 886; *ibid*, 1901, Pt. I, p. 964.

For rules to regulate the import of timber and other forest-produce into Simla, *see* Punjab Gazette, 1904, Pt. I, p. 315.

For the Punjab River Rules, *see* Punjab Gazette, 1879, Pt. I, p. 542; *ibid*, 1903, Pt. I, p. 162.

For rules to regulate the transit of timber and other forest-produce within the limits of Rawalpindi District, *see* Punjab Gazette, 1907, Pt. I, p. 16.

[2] These words were substituted for the words "and other" by the Forest Act, 1890 (V of 1890), s. 8 (*3*), General Acts, Vol. IV.

which such timber or other produce shall be brought to, stored at and removed from such [1] [depôts];

(*f*) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest-produce, and the throwing of grass, brushwood, branches and leaves into any such river or any act which may cause such river to be closed or obstructed;

(*g*) provide for the prevention and removal of any obstruction of the channel or banks of any such river, and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated the same;

(*h*) prohibit absolutely or subject to conditions, within specified local limits, the establishment of saw-pits, the converting, cutting, burning, concealing or marking of timber, the altering or effacing of any marks on the same, and the possession or carrying of marking hammers or other implements used for marking timber;

(*i*) regulate the use of property-marks for timber, and the registration of such marks; prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.

[2] [The Local Government may direct that any rule made under this section shall not apply to any specified class of timber or other forest-produce or to any specified local area.]

Penalty for breach of rules made under section 41.

42. The Local Government may by such rules prescribe as penalties for the infringement thereof imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

Double penalties may be inflicted in cases where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or if the offender has been previously convicted of a like offence.

Government and Forest officers not liable for damage to forest-produce at depôt.

43. The Government shall not be responsible for any loss or damage which may occur in respect of any timber or other forest-produce while at a depôt established under a rule made under section 41, or while detained elsewhere, for the purposes of this Act; and no Forest-officer shall be responsible for any such loss or damage unless he causes such loss or damage negligently, maliciously or fraudulently.

All persons bound to aid in case of accident at depôt.

44. In case of any accident or emergency involving danger to any property at any such depôt, every person employed at such depôt, whether by the Government or by any private person, shall render assistance to any Forest-officer

1 "Depôts" was substituted for "depôt" by the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol. IV.

2 This paragraph was added by the Forest Act, 1890 (V of 1890), s. 8 (*4*), General Acts, Vol. IV.

or Police-officer demanding his aid in averting such danger and securing such property from damage or loss.

CHAPTER IX.

OF THE COLLECTION OF DRIFT AND STRANDED TIMBER.

Certain kinds of timber to be deemed property of Government until title thereto proved, and may be collected accordingly.

45. All timber found adrift, beached, stranded or sunk;

all wood or timber bearing marks which have not been registered under section 41, or on which the marks have been obliterated, altered or defaced by fire or otherwise, and,

in such areas as the Local Government directs,[1] all unmarked wood and timber,

shall be deemed to be the property of Government unless and until any person establishes his right and title thereto, as provided in this Chapter.

Such timber may be collected by any Forest-officer or other person entitled to collect the same by virtue of any rule made under section 51, and may be brought to such depôts as the Forest-officer may from time to time notify as depôts for the reception of drift timber.

The Local Government may, by notification in the local official Gazette, exempt any class of timber from the provisions of this section, and withdraw such exemption.

Notice to claimants of drift-timber.

46. Public notice shall from time to time be given by the Forest-officer of timber collected under section 45. Such notice shall contain a description of the timber, and shall require any person claiming the same to present to such officer, within a period not less than two months from the date of such notice, a written statement of such claim.

Procedure on claim preferred to such timber.

47. When any such statement is presented as aforesaid, the Forest-officer may, after making such inquiry as he thinks fit, either reject the claim after recording his reasons for so doing, or deliver the timber to the claimant.

If such timber is claimed by more than one person, the Forest-officer may either deliver the same to any of such persons whom he deems entitled thereto, or may refer the claimants to the Civil Courts, and retain the timber pending the receipt of an order from any such Court for its disposal.

On rejection of claim to such timber, claimant may institute suit.

Any person whose claim has been rejected under this section may, [2][within three months] from the date of such rejection, institute a suit to recover possession of the timber claimed by him; but no person shall recover any compen-

[1] For rules made under this section for—
(1) Central Provinces, *see* C. P. R. and O;
(2) United Provinces, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 66;
(3) Punjab, *see* Punjab Gazette, 1902, Pt. I, p. 400.

[2] These words were substituted for the words "within two months" by the Forest Act, 1890 (V of 1890), s. 9, printed, General Acts, Vol. IV.

sation or costs against the Government, or against any Forest-officer, on account of such rejection or the detention or removal of any timber, or the delivery thereof to any other person under this section.

No such timber shall be subject to process of any Civil, Criminal or Revenue Court until it has been delivered, or a suit has been brought, as provided in this section.

Disposal of unclaimed timber.

48. If no such statement is presented as aforesaid, or if the claimant omits to prefer his claim in the manner and within the period prescribed by the notice issued under section 46, or on such claim having been so preferred by him and having been rejected, omits to institute a suit to recover possession of such timber within the further period limited by section 47, the ownership of such timber shall vest in the Government, or, when such timber has been delivered to another person under section 47, in such other person free from all encumbrances [1][not created by him].

Government and its officers not liable for damage to such timber.

49. The Government shall not be responsible for any loss or damage which may occur in respect of any timber collected under section 45, and no Forest-officer shall be responsible for any such loss or damage unless he causes such loss or damage negligently, maliciously or fraudulently.

Payments to be made by claimant before timber is delivered to him.

50. No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the Forest-officer or other person entitled to receive it such sum on account thereof as may be due under any rule made in pursuance of section 51.

Power to make rules and prescribe penalties.

51. The Local Government may from time to time make rules [2] to regulate the following matters (namely) :—

(*a*) the salving, collection and disposal of all timber mentioned in section 45;

(*b*) the use and registration of boats used in salving and collecting timber;

(*c*) the amounts to be paid for salving, collecting, moving, storing and disposing of such timber;

(*d*) the use and registration of hammers and other instruments to be used for marking such timber.

The Local Government may from time to time prescribe, as penalties for the infringement of any rules made under this section, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

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[1] These words were added by Act V of 1890, s. 10.

[2] For rules made under this section for—

(1) Bombay, *see* Bom. R. and O ;

(2) Central Provinces, *see* C. P. R. and O ;

(3) United Provinces, *see* United Provinces Gazette, 1902, Pt. I, p. 795 ;

(4) Bengal, for the Jalpaiguri and Darjiling Districts, *see* Calcutta Gazette, 1901, Pt. I, p. 29 ;

(5) Sindh, *see* Bombay Government Gazette, 1902, Pt. I, p. 297.

CHAPTER X.

PENALTIES AND PROCEDURE.

Seizure of property liable to confiscation.

52. When there is reason to believe that a forest-offence has been committed in respect of any forest produce, such produce, together with all tools, boats, carts and cattle used in committing any such offence, may be seized by any Forest-officer or Police-officer.

Application for confiscation.

Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made :

Provided that, when the forest-produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

Procedure thereupon.

53. Upon the receipt of any such report the Magistrate shall, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law.

Forest-produce, tools, etc., when liable to confiscation.

54. All timber or forest-produce which is not the property of Government and in respect of which a forest-offence has been committed, and all tools, boats, carts and cattle used in committing any forest-offence, shall be liable to confiscation.

Such confiscation may be in addition to any other punishment prescribed for such offence.

Disposal, on conclusion of trial for forest-offence, of produce in respect of which it was committed.

55. When the trial of any forest-offence is concluded, any forest-produce in respect of which such offence has been committed shall, if it is the property of Government or has been confiscated, be taken charge of by a Forest-officer and in any other case may be disposed of in such manner as the Court may direct.

Procedure when offender not known, or cannot be found.

56. When the offender is not known, or cannot be found, the Magistrate may, if he finds that an offence has been committed, order the property in respect of which the offence has been committed to be confiscated and taken charge of by the Forest-officer, or to be made over to the person [1][whom the Magistrate deems to be entitled to the same] :

Provided that no such order shall be made until the expiration of one month from the date of seizing such property, or without hearing the person (if any) claiming any right thereto, and the evidence (if any) which he may produce in support of his claim.

Procedure as to perishable

57. The Magistrate may, notwithstanding anything hereinbefore con-

[1] These words were substituted for the words " whom he deems to be entitled to the same " by the Forest Act, 1890 (V of 1890), s. 11, General Acts, Vol. IV.

property seized under section 52.

tained, direct the sale of any property seized under section 52 and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold.

Appeal from orders under sections 54, 55 and 56.

58. The officer who made the seizure under section 52, or any of his official superiors, or any person claiming to be interested in the property so seized, may, within one month from the date of any order passed under section 54, 55 or 56, appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall be final.

Property when to vest in Government.

59. When an order for the confiscation of any property has been passed under section 54 or 56, as the case may be, and the period limited by section 58 for an appeal from such order has elapsed and no such appeal has been preferred, or when, on such an appeal being preferred, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the Government free from all incumbrances.

Saving of power to release property seized.

60. Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the Local Government from directing at any time the immediate release of any property seized under section 52.

Punishment for wrongful seizure.

61. Any Forest-officer or Police-officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Penalty for counterfeiting or defacing marks on trees and timber and for altering boundary-marks.

62. Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code,[1] XLV of 1860.

(*a*) knowingly counterfeits upon any timber or standing tree a mark used by Forest-officers to indicate that such timber or tree is the property of the Government or of some person, or that it may lawfully be cut or removed by some person; or

(*b*) alters, defaces or obliterates any such mark placed on a tree or on timber by or under the authority of a Forest-officer; or

(*c*) alters, moves, destroys or defaces any boundary mark of any forest or waste-land to which the provisions of this Act are applied,

shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

Power to arrest without warrant.

63. Any Forest-officer or Police-officer may, without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest-offence punishable with imprisonment for one month or upwards.

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[1] General Acts, Vol. I.

Every officer making an arrest under this section shall without unnecessary delay take or send the person arrested before the Magistrate having jurisdiction in the case, [1][or to the officer in charge of the nearest police-station].

Nothing in this section shall be deemed to authorize such arrest for any act which is an offence under Chapter IV of this Act, unless such act has been prohibited under section 29, clause (*c*).

Power to prevent commission of offence.

64. Every Forest-officer and Police-officer shall prevent, and may interfere for the purpose of preventing, the commission of any forest-offence.

Power to try offences summarily.

65. The Magistrate of the district[2] and any Magistrate of the first class specially empowered in this behalf by the Local Government may try summarily, under the Code of Criminal Procedure,[3] any forest-offence punishable only with imprisonment for a term not exceeding six months, or fine not exceeding five hundred rupees, or both.

Operation of other laws not barred.

66. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under such other law to any higher punishment or penalty than that provided by the rules made under this Act:

Provided that no person shall be punished twice for the same offence.

Power to compound offences.

[4]**67.** (*1*) The Local Government may from time to time, by notification in the official Gazette, empower a Forest-officer by name, or as holding an office,—

(*a*) to accept from any person against whom a reasonable suspicion exists that he has committed any forest-offence, other than an offence specified in section 61 or section 62, a sum of money by way of compensation for the offence which such person is suspected to have committed, and,

(*b*) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.

(*2*) On the payment of such some of money, or such value, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceedings shall be taken against such person or property.

(*3*) A Forest-officer shall not be empowered under this section unless he is a Forest-officer of a rank not inferior to that of a Ranger and is in receipt of

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1 These words were added by the Forest Act, 1890 (V of 1890), s. 12, General Acts, Vol. IV.

2 Now District Magistrate—*see* the Code of Criminal Procedure, 1898 (Act V of 1898), s. 3, General Acts, Vol. V.

3 The reference should now be taken as being made to Act V of 1898, General Acts, Vol. V.

4 This section was substituted for the original s. 67 by the Forest Act, 1890 (V of 1890), s. 13, General Acts, Vol. IV.

a monthly salary amounting to at least one hundred rupees, and the sum of money accepted as compensation under sub-section (*1*), clause (*a*), shall in no case exceed the sum of fifty rupees.

Presumption that forest-produce belongs to Government.

68. When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest-produce is the property of the Government, such produce shall be presumed to be the property of the Government until the contrary is proved.

CHAPTER XI.

CATTLE-TRESPASS.

Cattle-trespass Act, 1871, to apply.

69. Cattle trespassing in a reserved forest or in any portion of a protected forest which has been lawfully closed to grazing shall be deemed to be cattle doing damage to a public plantation within the meaning of the 11th section of the Cattle-trespass Act, 1871[1], and may be seized and impounded as such by any Forest-officer or Police-officer. I of 1871.

Power to alter fines fixed by that Act.

70. The Local Government may from time to time, by notification in the local official Gazette, direct that in lieu of the fines fixed by the 12th section of the Act last aforesaid, there shall be levied for each head of cattle impounded under section 69 of this Act such fines as it thinks fit, but not exceeding the following, that is to say :—

For each elephant	ten rupees.
For each buffalo or camel	two „
For each horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow or heifer . . .	one rupee.
For each calf, ass, pig, ram, ewe, sheep, lamb, goat or kid	eight annas.

CHAPTER XII.

OF FOREST-OFFICERS.

Local Government may invest Forest-officers with certain powers.

71. The Local Government may invest any Forest-officer by name, or as holding an office, with the following powers, that is to say :—

(*a*) power to enter upon any land and to survey, demarcate and make a map of the same ;

(*b*) the powers of a Civil Court to compel the attendance of witnesses and the production of documents ;

[1] *Supra.*

(*c*) power to issue a search-warrant under the Code of Criminal Procedure[1];

(*d*) power to hold an inquiry into forest-offences, and, in the course of such inquiry, to receive and record evidence.

Any evidence recorded under clause (*d*) of this section shall be admissible in any subsequent trial before a Magistrate, provided that it has been taken in the presence of the accused person.

Forest-officers deemed public servants.

72. All Forest-officers shall be deemed to be public servants within the meaning of the Indian Penal Code.[2]

XLV of 1860.

Indemnity for acts done in good faith

73. No suit shall lie against any public servant for anything done by him in good faith under this Act.

Forest-officers not to trade.

74. Except with the permission in writing of the Local Government, no Forest-officer shall, as principal or agent, trade in timber or other forest-produce or be or become interested in any lease of any forest or in any contract for working any forest, whether in British or Foreign territory.

CHAPTER XIII.

SUBSIDIARY RULES.

Additional powers to make rules.

75. The Local Government may from time to time make rules [3]—

(*a*) to prescribe and limit the powers and duties of any Forest-officer under this Act [4];

(*b*) to regulate the rewards [5] to be paid to officers and informers out of the proceeds of fines and confiscations under this Act;

(*c*) for the preservation, reproduction and disposal of trees and timber belonging to Government, but grown on lands belonging to or in the occupation of private persons; and,

(*d*) generally, to carry out the provisions of this Act.[6]

Penalties for breach of rules.

76. Any person breaking any rule under this Act, for the breach of which no special penalty is provided, shall be punished with imprisonment for a term

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1 *Read now* the Code of Criminal Procedure, 1898 (Act V of 1898), General Acts, Vol. V.

2 General Acts, Vol. I.

3 For rules made under this section for—

(1) Bombay, *see* Bom. R. and O.;

(2) Central Provinces, *see* C. P. R. and O. and Central Provinces Gazette, 1900, Pt. I, p. 214;

(3) United Provinces, *see* pp. 68 to 70 of the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894; *see* also North-Western Provinces and Oudh Gazette, 1899, Pt. 1, p. 494; *ibid*, 1900, Pt. I, p. 491; U. P. Gazette, 1907, Pt. I, p. 189;

(4) Punjab, *see* Punjab Gazette, 1899, Pt. I, p. 748.

4 For notification declaring that certain officers shall exercise the powers of Forest-officers under certain sections, *see* Calcutta Gazette, 1901, Pt. I, p. 28.

5 For rules made by the Government of Bengal, *see* Calcutta Gazette, 1906, Pt. I, p. 1094.

6 For rules under this clause, as to measurement and registration of boats in the Sundarban Division, *see* Calcutta Gazette, 1906, Pt. I, p. 1657.

which may extend to one month, or fine which may extend to five hundred rupees, or both.

Rules when to have force of law.

[1] **77.** All rules made by the Local Government under this Act shall be published in the local official Gazette, and shall thereupon, so far as they are consistent with this Act, have the force of law:

Provided that no rule made under section 27, 31 or 41 shall be so published without the previous sanction of the Governor General in Council.

CHAPTER XIV.

MISCELLANEOUS.

Persons bound to assist Forest-officers and Police-officers.

78. Every person who exercises any right in a reserved or protected forest or who is permitted to take any forest-produce from, or to cut and remove timber or to pasture cattle in, such forest, and

every person who is employed by any such person in such forest, and

every person in any village contiguous to such forest who is employed by the Government, or who receives emoluments from the Government for services to be performed to the community,

shall be bound to furnish without unnecessary delay to the nearest Forest-officer or Police-officer any information he may possess respecting the commission of, or intention to commit, any forest-offence, and shall assist any Forest-officer or Police-officer * * *[2] —

(*a*) in extinguishing any fire occurring in such forest;

(*b*) in preventing any fire which may occur in the vicinity of such forest from spreading to such forest;

[3][and shall assist any Forest-officer or Police-officer demanding his aid—]

(*c*) in preventing the commission in such forest of any forest-offence; and,

(*d*) when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender.

Management of forests the joint property of Government and other persons.

79. If the Government and any person be jointly interested in any forest or waste-land, or in the whole or any part of the produce thereof, the Local Government may from time to time either —

(*a*) undertake the management of such forest, waste-land or produce, accounting to such person for his interest in the same; or

(*b*) issue such regulations for the management of the forest, waste-land or produce by the person so jointly interested as it deems necessary for the management thereof and the interests of all parties therein.

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[1] *See* also s. 23 of the General Clauses Act, 1897 (X of 1897), General Acts, Vol. VI.

[2] The words "demanding his aid" were omitted by s. 4 of the Indian Forest (Amendment) Act, 1901 (V of 1901), General Acts, Vol. V.

[3] Inserted after clause (*b*) by *ibid.*

When the Local Government undertakes, under clause (*a*) of this section, the management of any forest, waste-land or produce, it may from time to time, by notification in the local official Gazette, declare that any of the provisions contained in Chapters II and IV of this Act shall apply to such forest, waste-land or produce, and thereupon such provisions shall apply accordingly.

Failure to perform service for which a share in produce of Government forest is enjoyed.

80. If any person be entitled to a share in the produce of any forest which is the property of Government or over which the Government has proprietary rights, or to any part of the forest-produce of which the Government is entitled, upon the condition of duly performing any service connected with such forest, such share shall be liable to confiscation in the event of the fact being established to the satisfaction of the Local Government that such service is no longer so performed :

Provided that no such share shall be confiscated until the person entitled thereto, and the evidence (if any) which he may produce in proof of the due performance of such service, have been heard by an officer duly appointed in that behalf by the Local Government.

Recovery of money due to Government.

81. All money payable to the Government under this Act, or under any rule made under this Act, or on account of the price of any forest-produce, or of expenses incurred in the execution of this Act in respect of such produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land-revenue.

Lien on forest-produce for such money.

82. When any such money is payable for or in respect of any forest-produce, the amount thereof shall be deemed to be a first charge on such produce, and such produce may be taken possession of by a Forest-officer until such amount has been paid.

Power to sell such produce.

If such amount is not paid when due, the Forest-officer may sell such produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount.

The surplus (if any), if not claimed within two months from the date of the sale by the person entitled thereto, shall be forfeited to Her Majesty.

Land required under this Act to be deemed to be needed for a public purpose under Land Acquisition Act, 1870.

83. Whenever it appears to the Local Government that any land is required for any of the purposes of this Act, such land shall be deemed to be needed for a public purpose within the meaning of the Land Acquisition Act, 1870,[1] section 4.

X of 1870.

Recovery of penalties due under bond.

[2]**84.** When any person, in compliance with any rule under this Act, binds himself by any instrument to perform any duty or act, or covenants by any

[1] *Read now* the Land Acquisition Act, 1894 (I of 1894)—*see* s. 2 of the Act—General Acts, Vol. IV.

[2] S. 84 was added by the Forest Act, 1890 (V of 1890), s. 14, General Acts, Vol. IV.

instrument that he, or that he and his servants and agents, will abstain from any act, the whole sum mentioned in such instrument as the amount to be paid in case of a breach of the conditions thereof may, notwithstanding anything in section 74 of the Indian Contract Act, 1872,[1] be recovered from him in case of such breach as if it were an arrear of land-revenue. IX of 1872.

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(*See section 1.*)

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Number and year of Act or Regulation.	Title.	Extent of repeal.
[2]Act VII of 1865 . . .	An Act to give effect to rules for the management and preservation of Government forests.	So much as has not been repealed.
[3]Act VII of 1869 . . .	An Act to give validity to certain rules relating to forests in British Burma.	The whole.
[3]Act XIII of 1873 . .	An Act to amend the law relating to timber floated down the rivers of British Burma.	So much as has not been repealed.
[3]Regulation IX of 1874 . .	The Arakan Hill District Laws Regulation, 1874.	So far as it relates to Acts VII of 1865 and VII of 1869.

1 *Supra.*

2 Repealed (so far as it had not been repealed by the Indian Forest Act, 1878, and the Burma Forest Act, 1881) by the Repealing and Amending Act, 1891 (XII of 1891).

3 Repealed (in Lower Burma to the extent mentioned) by the Burma Forest Act, 1881 (XIX of 1881).

THE SEA CUSTOMS ACT, 1878.

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B.—Form of Bonded Warehouse Warrant.
C.—Form of Bond for the Removal of Spirit from a Licensed Distillery.

ACT No. VIII OF 1878.[1]

[*8th March 1878.*]

An Act to consolidate and amend the law relating to the levy of Sea Customs-duties.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to the levy of Sea Customs-duties; It is enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called the Sea Customs Act, 1878.

Local extent. Commencement.

It extends to the whole of British India, and shall come into force on the first day of April 1878.

Repeal of enactments.

2. The Acts mentioned in [2] [Part I of the Schedule] hereto annexed are repealed to the extent specified therein.

References to enactments repealed.

All references to any of the said Acts, in Acts passed subsequently thereto, shall be read as if made to the corresponding provisions of this Act.

Saving of appointments, etc.

All appointments, rules, declarations, exemptions and delegations made, powers conferred, forms and conditions prescribed, values, fees, rates and periods fixed, and notifications, instructions, directions, prohibitions, passes and licenses issued under any Act hereby repealed shall, if the same are in force at the time this Act comes into force, be deemed to have been respectively made, conferred, prescribed, fixed and issued under this Act, in so far as they are consistent herewith.

Interpretation.

3. In this Act, unless there be something repugnant in the subject or context,—

"Chief Customs-authority."

(*a*) "Chief Customs-authority" denotes the person authorized [3] to

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[1] For Statement of Objects and Reasons, see Gazette of India, 1876, Pt. V, p. 1402; for the Report of the Select Committee, *see ibi* , 1877, Pt. V, p. 491 ; for discussions in Council, *see ibid*, 1876, Supplement, p. 1289 ; *ibid*, 1877, Supplement, p. 2770 ; *ibid*, 1878, Supplement, p. 448.

The Inland Bonded Warehouses Act, 1896 (VIII of 1896), is to be read with and taken as part of this Act—*see* s. 1 (2) of the former Act, General Acts, Vol. IV. As to application of the Act in the case of cotton-duties, *see* the Cotton-duties Act, 1896 (II of 1896), General Acts, Vol. IV.

The Act has been declared to be in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (*l*), Bur. Code.

Ss. 144 to 154 have been declared to be in force in the Angul District, *see* the Angul District Regulation, 1894 (I of 1894), s. 3, Ben. Code.

[2] These words were substituted for the words "the first schedule" by the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol. IV.

[3] In Burma, the Financial Commissioner has been appointed the Chief Customs-authority in and for Burma, *see* Burma Gazette, 1889, Pt. I, p. 179.

The Board of Revenue, Eastern Bengal and Assam, has been appointed to exercise chief control, in the distr cts of Goalpara, Kamrup, Darrang, Nowgong, Sibsagar, Lakhimpur and Sylhet and certain parts of the Cachar District, *see* Eastern Bengal and Assam Gazette, 1905, Pt. I, p. 5.

exercise, subject to the Local Government, the chief control in matters relating to Sea-Customs in any place in which this Act operates :

(*b*) " Chief Customs-officer " denotes the Chief Executive Officer of Sea-customs for any port to which this Act applies : — " Chief Customs-officer."

(*c*) " Customs-collector " includes every officer of Customs for the time being in separate charge of a custom-house, or duly authorized to perform all, or any special, duties of an officer so in charge : — " Customs-collector."

(*d*) " Customs-port " means any place except Aden declared under section 11 to be a port for the shipment and landing of goods. — " Customs-port."

(*e*) " foreign port " means Aden and any place beyond the limits of British India[1] : — " Foreign port."

(*f*)[2] " vessel " includes anything made for the conveyance by water of human beings or property : — " Vessel."

(*g*) " coasting vessel " denotes any vessel proceeding from one customs-port to another customs-port, whether touching at any intermediate forign poot or not, or proceeding from or to a customs-port to or from a place declared to be a port under section 12 : — "Coasting vessel."

(*h*)[3] " master," when used in relation to any vessel, means any person, except a pilot or harbour-master, having command or charge of such vessel : — " Master."

(*i*) " Warehousing port " means any customs-port declared under section 14 to be a warehousing port : — "Warehousing port."

(*j*) " Warehouse " denotes any place appointed or licensed under section 15 or section 16. — " Warehouse."

Agent of owner of goods to be deemed owner for certain purposes.

4. When any person is expressly or impliedly authorized by the owner of any goods to be his agent in respect of such goods for all or any of the purposes of this Act, and such authorization is approved by the Customs-collector, such person shall, for such purposes, be deemed to be the owner of such goods.

When ship's agent may act for master.

5. Anything which a master is required or empowered to do under this Act may, with the express or implied consent of such master and the approval of the Customs-collector, be done by a ship's agent.

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[1] For order declaring ports in Cochin and Travancore to be British Indian ports for the purposes of the Act, *see* Gazette of India, 1865, p. 780.

For order declaring ports in the territories of His Highness the Gaekwar, the Thakur of Bhownugger and the Nawab of Cambay to be British Indian ports for the purposes of the Act, *see* Gazette of India, 1866, p. 908.

As to the ports of the Janjira State in Bombay, *see* Gazette of India, 1884 and 1885, Pt. I, pp. 282 and 142, respectively.

As to application of the Act to the port of Banda, *see* Brit. Enact. N. S. (W. I.), p. 241.

In Madras, the Board of Revenue has been appointed the Chief Customs-authority throughout the Presidency, *see* Fort St. George Gazette, 1900, Pt. I, p. 496.

[2] *Cf.* definition in s. 3 (*56*) of the General Clauses Act, 1897 (X of 1897), General Acts, Vol. IV.

[3] *Cf.* definition in s. 3 (*2*) of the General Clauses Act, 1897 (X of 1897), General Acts, Vol. IV.

CHAPTER II.

APPOINTMENT AND POWERS OF OFFICERS, ETC.

Appointment of Customs-officers.

6. The Local Government of every place in which duties of sea-customs are leviable may appoint [1] such persons as it thinks fit to be officers of Customs, and to exercise the powers conferred, and to perform the duties imposed, by this Act on such officers.

Suspension and dismissal of such officers.

Every person so appointed may be suspended or dismissed by the Local Government which appointed him.

Delegation of powers under section 6.

7. The Local Government may delegate [2] to any officer of Customs any of the powers vested in it by the first clause of section 6.

Suspension and dismissal of subordinate officers.

Every person appointed in exercise of such delegated power may be suspended or dismissed by the officer who appointed him.

Performance of duties of Customs-collector, where no custom-house.

8. At any place for which there is no custom-house, the Collector of the district and the officers subordinate to him shall, unless the Local Government otherwise directs, [3] perform all duties imposed by this Act on a Customs-collector and other officers of Customs.

Power to make rules.

9. The Chief Customs-authority may from time to time, with the sanction of the Local Government, make rules [4] consistent with this Act—

(*a*) prescribing and limiting the powers and duties of officers of Customs;

(*b*) regulating the delegation of their duties by such officers; and

(*c*) generally to carry out the provisions of this Act.

Customs-

10. No Chief Customs-authority or Chief Customs-officer, and no other

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[1] For notifications issued under the powers conferred by s. 6 in—
(1) Bombay, *see* Bom. R. and O.;
(2) Burma, see Bur. R. M.; Burma Gazette, 1908, Pt. I, p. 701; and
(3) Madras, *see* Mad. R. and O.

[2] For notifications delegating powers referred to in s. 7 in—
(1) Bombay, *see* Bom. R. and O.;
(2) Madras, *see* Mad. R. and O.; and
(3) Burma, *see* Burma Gazette, 1907, Pt. I, p. 360.

[3] In Madras, officers of the Salt, Abkari and Customs Departments have been directed to perform the duties imposed by ss. 174 and 182 in regard to imported intoxicating drugs prepared from the hemp plant, *see* Fort St. George Gazette, 1901, Pt. I, p. 95.

[4] For rules made under s. 9 for—
(1) Bengal, *see* Ben. R. and O.;
(2) Burma, *see* Bur. R. M.;
(3) Bombay, *see* Bom. R. and O.; and
(4) Madras, *see* Mad. R. and O.

For rules under s. 9 in conjunction with s. 72 (*b*), for the remuneration of preventive officers for overtime work in the port of Calcutta, see Calcutta Gazette, 1906, Pt. I, p. 784.

As to rules for Bengal in conjunction with ss. 105 and 130 for the weighment and removal by rail or water of non-duty paid salt from ship board, *see* Ben. R and O.; for Burma, as to the discharge of salt at night and reception into bond, *see* Burma Gazette, 1903, Pt. I, p. 403.

For rules for Burma, to regulate the payment of rewards to persons contributing to the detection of offences under the Act, *see* Burma Gazette, 1898, Pt. IV, p. 381.

For Bengal in conjunction with s. 196 for the remuneration of Examining Officers, Appraisers etc. (for work outside the custom-house premises, etc.), *see* Calcutta Gazette, 1904, Pt. I, p. 1480

officer of Customs whom such Chief authority or Chief officer deems it necessary to exempt on grounds of public duty, shall be compelled to serve on any jury or inquest, or as an assessor.

officers exempted from service on jury or inquest or as assessors.

CHAPTRE III.

APPOINTMENT OF PORTS, WHARVES, CUSTOM-HOUSES, WAREHOUSES, AND BOARDING AND LANDING STATIONS.

11. The Local Government may from time to time, by notification in the official Gazette,[1]—

Power to appoint ports, wharves and custom-houses.

(*a*) declare the places within the territories administered by it which alone shall be ports for the shipment and landing of goods ;

(*b*) declare the limits of such ports ;

(*c*) [2] appoint proper places therein to be wharves for the landing and shipping of goods, or of particular classes of goods ;

(*d*) declare the limits of any such wharf ;

(*e*) alter the name of any such port or wharf ; and

(*f*) declare what shall, for the purposes of this Act, be deemed to be a custom-house, and the limits thereof [3].

12. The Local Government may also from time to time in like manner declare places to be [4] ports for the carrying on of coasting trade with customs-ports, or with any specified customs-port, and for no other purpose.

Power to declare places to be ports for coasting-trade.

13. The Governor General in Council may from time to time direct, by noti- Power to

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[1] For notifications issued under this section in—

(1) Bengal, *see* Ben. R. and O.; Gazette of India, 1905, Pt. II, p. 658, for shipment of husked and unhusked rice ;
(2) Bombay, *see* Bom. R. and O.;
(3) Burma, *see* Bur. R. M.; Burma Gazette, 1907, Pt. I, p. 210 ; and
(4) Madras, *see* Mad. R. and O.

[2] For places under the Port Commissioners, Calcutta, appointed to be wharves for the landing of cargo on which duty has to be paid, *see* Calcutta Gazette, 1904, Pt. I, p. 1121.

For notification appointing the main wharf in the Port of Mergui to be a wharf for the landing and shipping of cargo, *see* Burma Gazette, 1907, Pt. I, p. 210.

For notifications under s. 11 (*c*) and (*d*), *see* Bom. R. and O.; and Bombay Government Gazette, 1907, Pt. I, pp. 636, 811 and 899.

For notification by the Government of Madras, *see* Fort St. George Gazette, 1908, Pt. I, p. 314.

[3] For notification by the Government of Madras declaring certain areas and buildings to be a custom-house at the Port of Madras, *see* Fort St. George Gazette, 1904, Pt. I, p. 477.

[4] For notifications issued under s. 12 in—

(1) Bengal, *see* Ben. R. and O.;
(2) Bombay, *see* Bom. R. and O.;
(3) Madras, *see* Mad. R. and O.; and
(4) Eastern Bengal and Assam, *see* E. B. and Assam Gazette, 1908, Pt. II, p. 647.

declare that foreign ports shall be regarded as customs-ports for certain purposes.

fication [1] in the Gazette of India, that all goods or any specified class of goods imported from or exported to any foreign port to or from a customs-port shall, with such limitations and on such conditions (if any) as he thinks fit, be treated for any of the purposes of this Act as goods imported from or exported to a customs-port, as the case may be.

Power to declare warehousing ports.

14. The Local Government may from time to time declare, by notification in the official Gazette, that any customs-port shall be a warehousing port[2] for the purposes of this Act.

Power to appoint public warehouses.

15. At any warehousing port, [3] the Chief Customs-authority may, from time to time, [4] appoint public warehouses wherein dutiable goods may be deposited without payment of duty on the first importation thereof, and may cancel such appointment.

Power to license private warehouses.

16. At any warehousing port [5] the Chief Customs-officer may from time to time license private warehouses[6] wherein dutiable goods may be deposited as aforesaid.

Form of application for license.

Every application for a license for a private warehouse shall be in writing, and shall be drawn up in such form as is from time to time prescribed by the Chief Customs-authority, and shall be signed by the applicant.

Revocation of license.

Every license granted under this section may be cancelled on conviction of the licensee of any offence under this Act relating to warehouses, unless it is otherwise provided in the license, or on the expiration of one month's notice in writing given to the licensee by the Chief Customs-officer.

Stations for Customs-officers to board and land.

17. The Chief Customs-authority may from time to time appoint, in or near any customs-port, stations or limits at or within which vessels arriving at or departing from such port shall bring-to for the boarding or landing of officers of Customs, and may, unless separate provision therefor has been

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[1] For orders issued under s. 13, *see* Gen. R. and O., Ed. 1905.

[2] For notifications under the powers conferred by this section in—

(1) Bengal, *see* Ben. R. and O.;
(2) Bombay, *see* Bom. R. and O.;
(3) Burma, *see* Bur. R. M.; and
(4) Madras, *see* Mad. R. and O.

[3] As to power of Chief Customs-authority to appoint a public or license a private warehouse at places other than warehousing ports, *see* s. 4 (*1*) of the Inland Bonded Warehouses Act, 1896 (VIII of 1896), General Acts, Vol. IV.

[4] For instances of notifications appointing warehouses in—

Bengal, *see* Ben. R. and O.; Calcutta Gazette, 1905, Pt. I. p. 1297;
Bombay, *see* Bom. R. and O.; and
Burma, *see* Bur. R. M.; Burma Gazette, 1903, Pt. I, p. 404.

[5] As to power of Chief Customs-authority to appoint a public or license a private warehouse at places other than warehousing ports, *see* s. 4 (*1*) of the Inland Bonded Warehouses Act, 1896 (VIII of 1896), General Acts, Vol. IV.

[6] No arms, ammunition or military stores may be deposited in any warehouse licensed under s. 16 without the sanction of the Local Government, *see* Indian Arms Act, 1878 (XI of 1878), s. 7, *infra*.

made under the Indian Ports Act, 1875,[1] direct at what particular place in any such port vessels, not brought into port by pilots, shall anchor or moor.[2]

CHAPTER IV.

PROHIBITIONS AND RESTRICTIONS OF IMPORTATION AND EXPORTATION.

Prohibitions.

18. No goods specified in the following clauses shall be brought, whether by land or sea, into [3] British India :—

(*a*) any book printed in infringement of any law in force in British India on the subject of copyright, [4] when the proprietor of such copyright, or his agent, has given to the Chief Customs-authority a notice in writing that such copyright subsists, and a statement of the date on which it will expire :

(*b*) counterfeit coin : or coin which purports to be Queen's coin of India, or to be coin made under the Native Coinage Act, 1876,[5] but which is not of the established standard in weight or fineness :

IX of 1876.

(*c*) any obscene book, pamphlet, paper, drawing, painting, representation, figure or article :

[6] [(*d*) goods having applied thereto a counterfeit trade-mark within the meaning of the Indian Penal Code, [7] or a false trade-description within the meaning of the Indian Merchandise Marks Act, 1889 :]

XLV of 1860.
IV of 1889.

[8] [(*e*) goods made or produced beyond the limits of the United Kingdom and British India, and having applied thereto any name or trade-mark being, or purporting to be, * * * * * * * * * [9] the name or trade-mark of any

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1 *See* now the Indian Ports Act, 1908 (XV of 1908), General Acts, Vol. VI.

2 For notifications issued under s. 17 in—
(1) Bengal, *see* Ben. R. and O ;
(2) Bombay Presidency, *see* Bom. R. and O.

3 *See* notes to s. 3 (*e*), *supra*.

4 *See* the Indian Copyright Act, 1847 (XX of 1847), General Acts, Vol. I ; also the enactments enumerated under the head "Copyright" on page 106 of the Index to the Indian Statutes, Ed. 1897.

5 *Supra*.

6 Cls. (*d*) and (*e*) were substituted for the original cl. (*d*) by s. 10 (*1*) of the Indian Merchandise Marks Act, 1889 (IV of 1889), General Acts, Vol. III.

The original clause ran as follows :—"articles bearing any names, brands or marks, being or purporting to be the names, brands or marks of manufacturers resident in the United Kingdom or British India, and not made by such manufacturers."

7 General Acts, Vol. I.

8 *See* note to s. 18 (*d*), *supra*.

9 The words "or being a colourable imitation of" were repealed by the Sea Customs (Amendment) Act, 1904 (XVI of 1904), General Acts, Vol. VI.

person who is a manufacturer, dealer or trader in the United Kingdom or in British India unless—

(i) the name or trade-mark is, as to every application thereof, accompanied by a definite indication of the goods having been made or produced in a place beyond the limits of the United Kingdom and British India, and

[1][(ii) the country in which that place is situated is in that indication indicated in letters as large and conspicuous as any letter in the name or trade-mark, and in the same language and character as the name or trade-mark :]

[2](*f*) piece-goods, such as are ordinarily sold by length or by the piece, which—

(i) have not conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece, and

(ii) have been manufactured beyond the limits of India, or,

(iii) having been manufactured within those limits have been manufactured beyond the limits of British India in premises which, if they were in British India, would be a factory as defined in the Indian Factories Act, 1881.[3]] XV of 1881.

Power to prohibit or restrict importation or exportation of goods.

19. The Governor General in Council may from time to time, by notification in the Gazette of India, [4]prohibit or restrict the bringing or taking by sea or by land goods of any specified description into or out of British India or any specified part of British India.

Detention and confiscation of goods whose importation is prohibited.

[5] **19A.** (*1*) Before detaining any such goods as are or may be specified in or under section 18 or section 19, as the case may be, or taking any further proceedings with a view to the confiscation thereof under this Act, the Chief Customs-officer or other officer appointed by the Local Government in this behalf may require the regulations under this section, whether as to information, security, conditions or other matters, to be complied with, and may

1 These words were substituted for the words "that place and the country in which it is situated are" by s. 3 of the Indian Merchandise Marks and Sea Customs Acts Amendment Act, 1891 (IX of 1891), General Acts, Vol. IV.

2 Cl. (*f*) was added by s. 10 (*2*) of the Indian Merchandise Marks Act, 1889 (IV of 1889), General Acts, Vol. IV.

3 General Acts, Vol. III.

4 For list of notifications issued under s. 19, *see* Gen. R. and O., and Gazette of India, 1906, Pt. I. p. 456 ; *ibid*, 1907, Pt. I, pp. 451, 661, 743, 850 ; *ibid*, 1908, Pt. I. pp. 32, 218, 310, 328.
For Madras, *see* Mad. R. and O., and Gazette of India, 1908, Pt. I, p. 310.

5 S. 19A was added by s. 11 of the Indian Merchandise Marks Act, 1889 (IV of 1889), General Acts, Vol. IV.
For notification appointing the Assistant Political Resident, Aden, for the time being in charge of the Abkari Department, to be the officer at Aden authorised to act under this section, *see* Bombay Government Gazette, 1908, Pt. I, p. 524.

satisfy himself in accordance with those regulations that the goods are such as are prohibited to be imported.

(*2*) The Governor General in Council may [1] make regulations either general or special, respecting the detention and confiscation of goods the importation of which is prohibited, and the conditions, if any, to be fulfilled before such detention and confiscation, and may by such regulations determine the information, notices and security to be given, and the evidence requisite for any of the purposes of this section and the mode of verification of such evidence.

(*3*) Where there is on any goods a name which is identical with, or a colourable imitation of, the name of a place in the United Kingdom or British India, that name, unless accompanied in equally large and conspicious letters, and in the same language and character, by the name of the country in which such place is situate, shall be treated for the purposes of sections 18 and 19 as if it were the name of a place in the United Kingdom or British India.

(*4*) Such regulations may apply to all goods the importation of which is prohibited by section 18 or under section 19, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.

(*5*) The regulations may provide for the informant reimbursing any public officer and the Secratary of State for India in Council all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

(*6*) All regulations under this section shall be published in the Gazette of India and in the Calcutta, Fort St. George, Bombay and Burma Gazettes.

CHAPTER V.

LEVY OF, AND EXEMPTION FROM, CUSTOMS-DUTIES.

Goods dutiable.

20. Except as hereinafter provided, customs-duties shall be levied at such rates as may be prescribed by or under any law [2] for the time being in force, on—

(*a*) goods imported or exported by sea into or from any customs-port from or to any foreign port;

(*b*) opium, salt or salted fish imported by sea from any customs-port into any other customs-port;

(*c*) goods brought from any foreign port to any customs-port, and without payment of duty, there transhipped for, or thence carried to, and imported at, any other customs-port; and

(*d*) goods brought in bond from one customs-port to another:

1 For regulations in respect of piece-goods made under this sub-section, *see* Gen. R. and O, Gazette of India, 1891, Pt. I, p. 187, and *ibid*, 1898, Pt. I, p. 714; *ibid*, 1907, Pt. I, p. 401.

2 *See* the Indian Tariff Act, 1894 (VIII of 1894), General Acts, Vol. IV.

Proviso.

Provided that no such duties shall be levied on goods belonging to the Government.

Goods partially composed of dutiable articles.

21. Except as otherwise expressly provided by any law for the time being in force, goods whereof any article liable to duty under this Act forms a part or ingredient shall be chargeable with the full duty which would be payable on such goods if they were entirely composed of such article, or, if composed of more than one article liable to duty, then with the full duty which would be payable on such goods if they were entirely composed of the article charged with the highest rate of duty.

Power to fix tariff-values.

22. The Governor General in Council may from time to time, by notification in the Gazette of India, fix, for the purpose of levying duties, tariff-values of any goods exported or imported by sea on which customs-duties are by law imposed and alter any such values fixed [1] by any Tariff Act [2] for the time being in force.

General power to exempt from customs-duties.

23. The Governor General in Council may from time to time, by notification in the Gazette of India, [3] exempt any goods imported into, or exported from, British India, or into or from any specified port therein, from the whole or any part of the customs-duties leviable on such goods.

Power to authorize, in special cases, exemption from duty.

The Local Government may, [4] [with the previous sanction of the Governor General in Council,] by special order in each case, exempt from the payment of duty, under circumstances of an exceptional nature, to be stated in such order, any goods on which customs-duties are leviable.

Baggage in actual use.

24. The Customs-collector may, subject to any general rules relating to the landing and shipping of passengers' baggage and the passing of the same through the custom-house, which may be made under section 75, pass free of duty any baggage in actual use, and for this purpose may determine, subject to any such rules, whether any goods shall be treated as baggage in actual use, or as goods subject to duty.

Re-imported articles of country-produce.

25. If goods produced or manufactured in British India be imported into any customs-port from any foreign port, such goods shall be liable to all the duties, conditions and restrictions (if any) to which goods of the like kind and value not so produced or manufactured are liable on the first importation thereof :

Proviso.

Provided that, if such importation takes place within three years after the exportation of such goods, and it is proved to the satisfaction of the Customs-collector that the property in such goods has continued in the person by whom, or on whose account, they were exported, the goods may be admitted without payment of duty.

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1 *See* Gazette of India, 1907, Pt. I, p. 1143 ; *ibid*, 1908, Pt. I, pp. 352, 353, 677.

2 *See* now the Indian Tariff Act, 1894 (VIII of 1894), General Acts, Vol. IV.

3 *See* Genl. R. & O.

4 These words were inserted by s. 11 of the Indian Tariff Act, 1894 (VIII of 1894), General Acts, Vol. IV.

Excise-duty on importation of certain country goods.

26. Any goods produced or manufactured in British India which have been exported therefrom, and on the exportation of which any drawback of excise has been received, shall, on being imported into any customs-port, be subjected, unless the Chief Customs-authority in any particular case otherwise directs by special order, to payment of excise duty, at the rate to which goods of the like kind and quality are liable at such port.

Goods derelict and wreck.

27. All goods derelict, jetsam, flotsam and wreck, brought or coming into any place in British India, shall be subject to the same duties, if any, to which goods of the like kind are for the time being subject on importation at any customs-port, and shall in other respects be dealt with as if they were imported from a foreign port, unless it be shown to the satisfaction of the Customs-collector that such goods are the produce or manufacture of any place from which they are entitled to be admitted duty-free.

Country provisions and stores may be shipped free of duty.

28. Provisions and stores produced or manufactured in British India required for use on board of any vessel proceeding to any foreign port, may be shipped free of duty, whether of customs or excise, in such quantities as the Customs-collector determines with reference to the tonnage of the vessel, the numbers of the crew and passengers, and the length of the voyage on which the vessel is about to depart:

Provided that no rum shall be so shipped on any vessel going on a voyage of less than thirty days' probable duration.

Owner to declare real value, etc., of goods in bill of entry or shipping bill.

29. On the importation into, or exportation from, any customs-port of any goods, whether liable to duty or not, the owner of such goods shall, in his bill of entry or shipping bill, as the case may be, state the real value, quantity and description of such goods to the best of his knowledge and belief, and shall subscribe a declaration of the truth of such statement at the foot of such bill.

Power to require production of invoice, etc.

In case of doubt, the Customs-collector may require any such owner or any other person in possession of any invoice, broker's note, policy of insurance or other document, whereby the real value, quantity or description of any such goods can be ascertained, to produce the same, and to furnish any information relating to such value, quantity or description which it is in his power to furnish. And thereupon such person shall produce such document and furnish such information:

Provided that, if the owner makes and subscribes a declaration before the Customs-collector, to the effect that he is unable, from want of full information, to state the real value or contents of any case, package or parcel of goods, then the Customs-collector shall permit him, previous to the entry thereof, (1) to open such case, package or parcel, and examine the contents in presence of an officer of Customs, or (2) to deposit such case, package or parcel in a public warehouse appointed under section 15 without warehousing the same, pending the production of such information.

"Real value" defined.

30. For the purposes of this Act the real value shall be deemd to be—

(*a*) the wholesale cash price, less trade discount, for which goods of the like kind and quality are sold, or are capable of being sold, at the time and place of importation or exportation, as the case may be, without any abatement or deduction whatever, except (in the case of goods imported) of the amount of the duties payable on the importation thereof: or

(*b*) where such price is not ascertainable, the cost at which goods of the like kind and quality could be delivered at such place, without any abatement or deduction except as aforesaid.

Examination of *ad valorem* goods.

31. Goods chargeable with duty upon the value thereof, but for which a specific value is not fixed by law for the purpose of levying duties thereon, shall, without unnecessary delay, be examined by an officer of Customs. If it appears that the real value of such goods is correctly stated in the bill of entry or shipping bill, the goods shall be assessed in accordance therewith.

Procedure where such goods are under-valued by owner.

32. If it appears that such goods are properly chargeable with a higher rate or amount of duty than that to which they would be subject according to the value thereof as stated in the bill of entry or shipping bill, such officer may detain such goods.

In every such case the detaining officer shall forthwith give notice in writing to the owner of the goods of their detention, and of the value thereof as estimated by him; and the Customs-collector shall, within two clear working days after such detention, or within such reasonable period as may with the consent of the parties be arranged, determine either to deliver such goods on payment of duty charged according to the entry of such owner, or to retain the same for the use of Government.

If the goods be retained for the use of Government, the Customs-collector shall cause the full amount stated in the bill as their real value to be paid to the owner in full satisfaction for such goods in the same manner as if they had been transferred by ordinary sale, and shall, after due notice in the local official Gazette or some local newspaper, and without unnecessary delay, cause them to be put up to public auction in wholesale lots for cash on delivery.

If the Customs-collector deems the highest offer made at such sale to be inadequate, he may either adjourn the sale to some other day, to be notified as aforesaid, or buy in the goods, and without unnecessary delay dispose of them for the benefit of Government.

If the proceeds arising from such sale exceed the sum paid to the owner, together with (in the case of goods imported) the duty to which the goods are liable and all charges incurred by Government in connection with them, a portion not exceeding one-half of the overplus shall, at the discretion of the Chief Officer of Customs, be payable to the officer who detected the under-valuation of the goods.

Nothing in this section shall prevent the Chief Officer of Customs, when he has reason to believe that any such under-valuation was solely the result of accident or error, from permitting the owner of the goods, on his application for that purpose, to amend such entry, on payment of such increased rate of duties on the excess of the amended over the original valuation, or on such other terms as the Chief Officer of Customs may determine.

Abatement allowed on damaged goods.

33. If, on the first examination of any such goods under section 31, the owner thereof states in writing that such goods are, in consequence of damage sustained before delivery of the bill of entry, of value less than that stated in such bill, the Customs-collector, on being satisfied of the fact, may allow abatement of duty accordingly.

Reduced duty how determined.

The reduced duty to be levied on such goods may be ascertained by either of the following methods, at the option of the owner :—

(*a*) the real value of such goods may be fixed on appraisement by an officer of Customs and the duty may be assessed on the value so fixed ; or

(*b*) the goods may, after due notice in the local official Gazette or some local newspaper, be sold by public auction at such time (within thirty days from the date of delivery of the bill of entry), and at such place, as the Customs-collector appoints ; and the duty may be assessed on the gross amount realized by such sale, without any abatement or deduction, except (in the case of goods imported) of so much as represents the duties payable on the importation thereof.

Deterioration of tariff-value goods.

34. When any goods, the value of which has been fixed by law for the purpose of levying duties thereon, have, before delivery of the bill of entry, deteriorated to the extent of more than one-tenth of their value, the duty on such goods shall, if the owner thereof so desires, be assessed *ad valorem*.

The real value of such goods shall be ascertained as provided in section 33 ; and the duty shall be assessed thereon.

No abatement when duty is levied on quantity.

35. No abatement of duty on account of damage shall be allowed on wine, spirit or beer, or on any other articles on which duties are levied on quantity and not on value.

Restriction on amendment of bill of entry or shipping bill.

36. Except as provided in section 94, no amendment of a bill of entry or shipping bill relating to goods assessed for duty on the declared value, quantity or description thereof shall be allowed after such goods have been removed from the custom-house.

Alteration of import-duty

37. The rate of duty and the tariff valuation (if any) applicable to any goods imported shall be the rate and valuation in force on the date on which

or tariff-valuation.

the bill of entry thereof is delivered to the Customs-collector under section 86 [1]:

[2] Provided that, if such goods are warehoused under this Act, the rate and valuation (if any) applicable thereto shall be the rate and valuation in force on the date on which application is made to clear such goods from the warehouse for home consumption.

Explanation.—A bill of entry shall, for the purposes of this section, be deemed to be delivered when it is first presented to the proper officer of Customs.

Alteration of export-duty or tariff-valuation.

38. The rate of duty and tariff-valuation (if any) applicable to any goods exported shall be the rate and valuation in force when a shipping bill of such goods is delivered under section 137.

Payment of duties short-levied or erroneously refunded.

39. When customs-duties or charges have been short-levied through inadvertence, error, collusion or misconstruction on the part of the officers of Customs, or through mis-statement as to real value, quantity or description on the part of the owner,

or when any such duty or charge, after having been levied, has been, owing to any such cause, erroneously refunded,

the person chargeable with the duty or charge so short-levied, or to whom such refund has erroneously been made, shall pay the deficiency or repay the amount paid to him in excess, on demand being made within three months from the date of the first assessment or making of the refund;

and the Customs-collector may refuse to pass any goods belonging to such person until the said deficiency or excess be paid or repaid.

No refund of charges erroneously levied or paid, unless claimed within three months.

40. No customs-duties or charges which have been paid, and of which repayment, wholly or in part, is claimed in consequence of the same having been paid through inadvertence, error or misconstruction, shall be returned, unless such claim is made within three months from the date of such payment.

Power to give credit for, and keep account-current of, duties and charges.

41. The Customs-collector may, if he thinks fit, instead of requiring payment of customs-duties and charges due from any mercantile firm or public body, at the time such duties and charges are payable under this Act, keep with such firm or body an account-current of such duties and charges. Such account shall be settled at intervals not exceeding one month, and such firm or body shall make a deposit or furnish security sufficient in the opinion of

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[1] *See* the Petroleum (Customs Duty) Act, 1888 (II of 1888), s. 2, General Acts, Vol. IV, which is as follows:—

"2. The rate of duty applicable to petroleum of which the bill of entry is delivered, within the meaning of section 37 of the Sea Customs Act, 1878, to the Customs-collector under section 86 of that Act after the passing of this Act, shall be the rate of duty specified in the second schedule to the Indian Tariff Act, 1882, as amended by this Act." See now the Indian Tariff Act, 1894 (VIII of 1894), General Acts, Vol. IV.

[2] This proviso was substituted for the original provisos by s. 1 of the Sea Customs Act (1878) Amendment Act, 1889 (VIII of 1889), General Acts, Vol. IV.

the Customs-collector to cover the amount which may at any time be due from them in respect of such duties and charges.

CHAPTER VI.

DRAWBACK.

Drawback allowable on re-export.

42. When any goods, capable of being easily identified, which have been imported by sea into any customs-port from any foreign port, and upon which duties of customs have been paid on importation, are re-exported by sea from such customs-port to any foreign port, or as provisions or stores for use on board a ship proceeding to a foreign port, seven-eighths of such duties shall, except as otherwise hereinafter provided, be repaid as drawback:

Conditions for grant of drawback.

Provided that, in every case, the goods be identified to the satisfaction of the Customs-collector at such customs-port, and that the re-export be made within two years from the date of importation, as shown by the records of the custom-house, or within such extended term as the Chief Customs-authority, on sufficient cause being shown, in any case determines.

Drawback on goods exported to customs-port and thence to foreign port.

43. When any goods, having been charged with import-duty at one customs-port and thence exported to another, are re-exported by sea as aforesaid, drawback shall be allowed on such goods as if they had been so re-exported from the former port:

Proviso.

Provided that, in every such case, the goods be identified to the satisfaction of the officer in charge of the custom-house at the port of final exportation, and that such final exportation be made within three years from the date on which they were first imported into British India.

Drawback of duties on wine and spirit allowed for officers of Navy.

44. A drawback of the whole of the customs-duties shall be allowed on wine and spirit intended for the consumption of any officer of Her Majesty's Navy, on board of any of Her Majesty's ships in actual service, unless such wine and spirit have been warehoused without payment of duty on the first entry thereof.

The quantity of wine and spirit on which drawback may be so allowed in any one year for the use of such officers shall not exceed the quantities hereinafter allowed for each such officer respectively; that is to say—

	Gallons.
For every Admiral	1,260
Vice-Admiral	1,050
Rear-Admiral	840
Captain of 1st and 2nd rate	630
Captain of 3rd, 4th and 5th rate	420
Captain of an inferior rate	210
Lieutenant or other Commanding Officer, Marine-officer, Master, Purser or Surgeon	105

Persons entering such wine or spirit for drawback to declare name and rank of officer claiming same.

45. Every person clearing and claiming drawback for wine or spirit, as provided in section 44, shall state in the shipping bill the name of the officer for whose use such wine or spirit is intended, and of the ship in which he serves as well as the place and date of the last supply for which drawback was allowed.

All such wine and spirit shall be delivered into the charge of the proper officers of Customs at the port of shipment, to be shipped under their care; and when the officer commanding the ship has certified the receipt of such wine and spirit into his charge, and any such officer of Customs has certified the shipment, the drawback shall be paid to the person entitled to receive the same.

Transfer of wine or spirit from one naval officer to another.

46. The Customs-collector may permit the transfer of any such wine or spirit from one naval officer to another naval officer on board of the same, or of any other such vessel, as part of his authorized quantity;

or may permit the transhipment of any such wine or spirit from one vessel to another for the use of the same naval officer;

or the re-landing and warehousing of any such wine or spirit for future re-shipment.

The Customs-collector may also receive back the duties for any such wine or spirit, and allow the same to be cleared for home-consumption.

Provisions and stores for Her Majesty's Navy.

47. Provisions and stores for the use of Her Majesty's Navy or of any officer thereof which are subject to duty may, in like manner, be transferred, transhipped or re-landed and warehoused, free of duty;

and where duties have been paid on any such provisions or stores required for shipment, drawback of such duties, whether of customs or excise, shall be allowed on receipt of an application in writing from the officer commanding the ship for which they are intended, or from some other officer duly authorized to make such application.

Indian Marine and Marine-survey.

48. The provisions of sections 44, 45, 46 and 47 as to officers of Her Majesty's Navy apply also to officers of Her Majesty's Indian Marine and Marine Survey on board of any of the ships of such Marine or Survey proceeding to any port out of India, and the rules prescribed by section 47 as to provisions and stores for the use of Her Majesty's Navy apply also to provisions and stores for the use of such Marine or Survey.

Power to declare what goods are identifiable,

49. The Governor General in Council may from time to time, by notification in the Gazette of India,—

(*a*)[1] declare what goods shall, for the purpose of this Chapter, be deemed to be capable of being easily identified; and

[1] For notification issued under this clause, *see* Gazette of India, 1881, Pt. I, p. 227.

(*b*)[1] prohibit the payment of drawback upon the re-exportation of goods to any specified foreign port in India. and to prohibit drawback in case of specified foreign port.

50. Notwithstanding anything hereinbefore contained, no drawback shall be allowed— When no drawback allowed.

(*a*) upon goods not included in the export manifest, or

(*b*) where the goods to be exported are of less value than the amount of drawback claimed, or

(*c*) where the claim is for drawback amounting, in respect of any single shipment, to less than five rupees, and the Customs-collector thinks fit to reject it, or

(*d*) on salt, salted fish or opium.

51. No drawback shall be allowed unless the claim to receive such drawback be made and established at the time of re-export. Time to claim drawback.

No such payment of drawback shall be made until the vessel carrying the goods has put out to sea, or unless payment be demanded within six months from the date of entry for shipment. When payment made.

52. Every person, or his duly authorized agent, claiming drawback on any goods duly exported, shall make and subscribe a declaration that such goods have been actually exported, and have not been relanded and are not intended to be relanded at any customs-port; and that such person was at the time of entry outwards and shipment, and continues to be, entitled to drawback thereon. Declaration by parties claiming drawback.

CHAPTER VII.

ARRIVAL AND DEPARTURE OF VESSELS.

Arrival and Entry of Vessels inwards.

[2] **53.** The Local Government may, by notification in the local official Gazette, fix a place in any river or port, beyond which no vessel arriving shall pass until a manifest has been delivered to the pilot, officer of Customs or other person duly authorized to receive the same. Power to fix places beyond which inward bound vessels are not to proceed until manifest delivered.

If, in any river or port wherein a place has been fixed by the Local Government under this section, the master of any vessel arriving remains outside or Delivery of manifest when vessel

[1] For orders under this clause in conjunction with ss. 111 and 134, *see* Gazette of India, 1879, Pt. I, p. 344; *ibid*, 1895, Pt. I, p. 919.

[2] For rules as to vessels entering the outer harbour of Aden, *see* Bom. R. and O.

anchors below place so fixed.

below the place so fixed, such master shall, nevertheless, within twenty-four hours after the vessel anchors, deliver a manifest to the pilot, officer of Customs or other person authorized to receive the same.

Delivery of manifest where no place has been so fixed.

54. If any vessel arrives at any customs-port in which a place has not been so fixed, the master of such vessel shall, within twenty-four hours after such vessel has anchored within the limits of the port, deliver a manifest to the pilot, officer of Customs or other person authorized to receive the same.

Signature and contents of manifest.

55. Every manifest shall be signed by the master, and shall specify all goods imported in such vessel, showing separately all goods (if any) intended to be landed, transhipped or taken on to another port, and all ship's stores intended for consumption in port or on the homeward voyage, and shall contain such further particulars, and be made out in such form,[1] as the Chief Customs-authority may from time to time direct.

Amendment of errors in manifest.

The Customs-collector shall permit the master to amend any obvious error in the manifest, or to supply any omission which in the opinion of such Collector results from accident or inadvertence, by furnishing an amended or supplementary manifest,

and may, if he thinks fit, levy thereon such fee as the Chief Customs-authority from time to time directs.

Except as herein provided, no import manifest shall be amended.

Duty of person receiving manifest.

56. The person receiving a manifest under section 53 or 54 shall countersign the same and enter thereon such particulars as the Chief Customs-authority from time to time directs in this behalf.

Bulk not to be broken until manifest, etc., delivered, and vessel entered inwards.

57. No vessel arriving in any customs-port shall be allowed to break bulk until a manifest has been delivered as hereinbefore provided; nor until a copy of such manifest, together with an application for entry of such vessel inwards, has been presented by the master to the Customs-collector, and an order has been given thereon for such entry.

Master, if required, to deliver bill of lading, etc., to Customs-collector, and answer questions.

58. The master shall, if required so to do by the Customs-collector at the time of presenting such application, deliver to the Customs-collector the bill of lading or a copy thereof for every part of the cargo laden on board, and any port-clearance, cocket or other paper granted in respect of such vessel at the place from which she is stated to have come, and shall answer all such questions relating to the vessel, cargo, crew and voyage as are put to him by such officer.

The Customs-collector may, if any requisition or question made or put by him under this section is not complied with or answered, refuse to grant such application.

Special pass

59. Notwithstanding anything contained in section 57, the Customs-col-

[1] For form prescribed in Madras, *see* Mad. R. and O., and in Burma, *see* Bur. R. M.

lector may grant, prior to receipt of the manifest, and to the entry inwards of the vessel, a special pass[1] permitting bulk to be broken. for breaking bulk.

The granting of such pass shall be subject to such rules as may from time to time be made by the Chief Customs-authority.

60. Notwithstanding anything contained in section 53, 54, 57 or 58, the Customs-collector may accept from the ship's agent, in lieu of the master, delivery of the manifest or of any other document required by those sections to be delivered by the master. Manifest, etc., may be delivered by ship's agent.

Entry outwards, Port-clearance and Departure of Vessels.[2]

61. No vessel shall take on board any part of her export cargo, until a written application for entry of such vessel outwards, subscribed by the master of such vessel, has been made to the Custom-collector, or before an order has been given thereon by such officer for such entry. Order for entry outwards to be obtained before export cargo is shipped.

Every application made under this section shall specify the name, tonnage and national character of the vessel, the name of the master, and the name of every place for which cargo is to be shipped.

62. No vessel, whether laden or in ballast, shall depart from any customs-port until a port-clearance has been granted by the Customs-collector or other officer duly authorized to grant the same. No vessel to depart without port-clearance.

And no pilot shall take charge of any vessel proceeding to sea, unless the master of such vessel produces a port-clearance. No pilot to take charge of vessel proceeding to sea without production of port-clearance.

63. Every application for port-clearance shall be made by the master at least twenty-four hours before the intended departure of the vessel. Application for port-clearance.

The master shall at the time of applying for port-clearance — Master on applying for port-clearance to deliver documents and answer questions.

(*a*) deliver to the Customs-collector a manifest in duplicate in such form[3] as may from time to time be prescribed by the Chief Customs-authority signed by such master specifying all goods to be exported in the vessel and showing separately all goods and stores

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[1] For rules in force in Bombay and Karachi as to special passes for breaking bulk, *see* Bom. R. and O.

For rules in force in Madras under ss. 59 and 57, *see* Mad. R. and O.

[2] Certain formalities are required in respect of the marking of load lines and the provision of lights and means for making fog-signals before vessels may clear, *see* the Indian Merchant Shipping Act, 1880 (VII of 1880), ss. 34, 35, 38, 39 and 83, General Acts, Vol. III.

For instance of a further restriction in respect of grant of port-clearance, *see* s. 7 of the Indian Steamships Act, 1884 (VII of 1884), General Acts, Vol. III, and s. 29 of the Native Passenger Ships Act, 1887 (X of 1887), General Acts, Vol. IV.

[3] For form prescribed in Burma, *see* Burma Gazette, 1903, Pt. IV, p. 570; in Madras, *see* Mad. R. and O.

entered in the import manifest, and not landed or consumed on board or transhipped :

(*b*) deliver to the Customs-collector such shipping bills or other documents as such Customs-collector, acting under the general instructions of such Chief Customs-authority, requires ; and

(*c*) answer to the proper officer of Customs such questions touching the departure and destination of the vessel as are demanded of him.

The provisions of section 55 relating to the amendment of import manifests shall, *mutatis mutandis*, apply also to export manifests delivered under this section.

Power to refuse port-clearance.

[1]**64.** The Customs-collector may refuse port-clearance to any vessel until—

(*a*) the provisions of section 63 are complied with ;

(*b*) all port-dues and other charges and penalties due by such vessel, or by the owner or master thereof, and all duties payable in respect of any goods shipped therein, have been duly paid, or their payment secured by such guarantee, or by deposit at such rate, as such Customs-collector directs ;

(*c*) the ship's agent (if any) delivers to the Customs-collector a declaration in writing to the effect that he will be liable for any penalty imposed under section 167, No. 17, and furnishes security for the discharge of the same ;

(*d*) the ship's agent (if any) delivers to the Customs-collector a declaration in writing to the effect that such agent is answerable for the discharge of all claims for damage or short delivery which may be established by the owner of any goods comprised in the import cargo in respect of such goods.

A ship's agent delivering a declaration under clause (*c*) of this section shall be liable to all penalties which might be imposed on the master under section 167, No. 17, and a ship's agent delivering a declaration under clause (*d*) of this section shall be bound to discharge all claims referred to in such declaration.

Grant of port-clearance.

[2]**65.** When the Customs-collector is satisfied that the provisions of section 63, and if necessary of clauses (*b*) and (*c*) and (*d*) of section 64, have been complied with, he shall grant a port-clearance to the master, and shall return at the same time to such master one copy of the manifest duly countersigned by the proper officer of Customs.

Grant of port-clearance on

66. Notwithstanding anything contained in sections 64 and 65, the Customs-collector may (subject to such rules[3] as the Chief Customs-authority may

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[1] For form prescribed in Burma under this section, *see* Burma Gazette, 1903, Pt. IV p. 66 ; in Madras, *see* Mad. R. and O.

[2] For prescribed form issued under this section in Madras, *see* Mad. R. and O.

[3] For such rules, *see* Bur. R. M. ; in Madras, *see* Mad. R. and O.

from time to time prescribe) grant a port-clearance to the master when the ship's agent furnishes such security as the Customs-collector deems sufficient for duly delivering, within five days from the date of such grant, the manifest and other documents specified in section 63. security of ship's agent.

CHAPTER VIII.

General Provisions affecting Vessels in Port.

67. The Customs-collector at any customs-port may at any time depute at his discretion one or more officers of Customs to board any vessel in or arriving at such port. Power to depute Customs-officer to board ships.

Every officer of Customs so sent shall remain on board of such vessel by day and by night unless or until the Customs-collector otherwise orders. Duty of such officer.

68. Whenever an officer of Customs is so deputed on board of any vessel, the master of such vessel shall be bound to receive on board such officer, and one servant of such officer, and to provide such officer and servant with suitable shelter and accommodation, and likewise with a due allowance of fresh water, and with the means of cooking on board. Officer and servant to be received. Accommodation of officer and servant.

69. Every officer of Customs so deputed shall have free access to every part of the vessel, and may fasten down any hatchway or entrance to the hold and mark any goods before landing, and lock up, seal, mark or otherwise secure any goods on board of such vessel. Officers of Customs to have free access to every part of ship, and may seal and secure goods.

If any box, place or closed receptacle in any such vessel be locked, and the key be withheld, such officer shall report the same to the Customs-collector, who may thereupon issue to the officer on board, or to any other officer under his authority, a written order to search. Power to authorize search and opening of locks.

On production of such order, the officer bearing the same may require that any such box, place or closed receptacle be opened in his presence ; and, if it be not opened upon his requisition, he may break open the same.

70. Unless with the written permission of the Customs-collector or in accordance with a general permission granted under section 74, no goods other than passengers' baggage, or ballast urgently required to be shipped for the vessel's safety, shall be shipped or water-borne to be shipped or discharged from any vessel in any customs-port, except in the presence of an officer of Customs. Goods not to be shipped, discharged or water-borne except in presence of officer.

71. When an officer of Customs is deputed under section 67 to remain on board a vessel the tonnage of which does not exceed six hundred tons, a period Period allowed for discharge and

shipment of cargo.

of thirty working days, reckoned from the date on which he boards such vessel or such additional period as the Customs-collector directs, shall be allowed for the discharge of import-cargo and the shipment of export-cargo on board of such vessel.

One additional day shall, in like manner, be allowed for every fifty tons in excess of six hundred.

No charge shall be made for the services of a single officer of Customs for such allowed number of working days, or for the services of several such officers (if available) for respective periods not exceeding in the aggregate such allowed number of working days.

Consequence of exceeding same.

If the period occupied in the discharge and shipment of cargo be in excess of thirty working days, together with the additional period (if any) allowed under this section, the vessel shall be charged with the expense of the officer of Customs at a rate not exceeding five rupees per diem (Sundays and holidays excepted) for such excess period.

Allowance for period during which vessel is laid up.

In calculating any period allowed, or any charge made under this section, the period (if any) during which a vessel, after the completion of the discharge of import-cargo, and before commencing the shipment of export-cargo, is laid up by the withdrawal of the officer of Customs, upon application from the master, shall be deducted.

Goods not to be landed, etc., on Sundays or holidays, without permission, nor except within fixed hours.

[1] **72.** Except with the written permission of the Customs-collector, no goods, other than passengers' baggage, shall in any customs-port be discharged from any vessel, or be shipped or water-borne to be shipped,—

(*a*) on any Sunday or on any holiday or day on which the discharge or shipping of cargo, as the case may be, is prohibited by the Chief Customs-authority;

(*b*) on any day, except between such hours as such authority from time to time appoints by notification[2] in the official Gazette.

Goods not to be shipped, etc., except at wharves.

73. No goods shall in any customs-port be landed at any place other than a wharf or other place[3] duly appointed for that purpose, and

unless with the written permission of the Customs-collector, or when a general permission has been granted under section 74, no goods shall in any customs-port be shipped or water-borne to be shipped from any place other than a wharf or other place duly appointed for that purpose.

Power to exempt from sections 70 and 73.

74. Notwithstanding anything contained in section 70 or 73, the Chief Customs-authority may, by notification in the local official Gazette, give general permission for goods to be shipped or water-borne to be shipped in any

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1 For rules issued under this section in Burma, *see* Bur. R. M.; in Madras, *see* Mad. R. and O.
2 For instance of such notification, *see* Bom. R. and O.
3 For places appointed for the landing of goods in Burma under this section, *see* Bur. R. M.

customs-port from all or any places not duly appointed[1] as wharves, and without the presence or authority of an officer of Customs.

Power to make rules regarding baggage and mails.

75. The Chief Customs-authority may from time to time make [2]rules for the landing and shipping of passengers' baggage and the passing of the same through the Custom-house : and for the landing, shipping and clearing of parcels forwarded by Her Majesty's or other mails, or by other regular packets and passenger-vessels.

Landing fees.

When any baggage or parcels is or are made over to an officer of Customs for the purpose of being landed, a fee of such amount as the Local Government from time to time directs shall be chargeable thereon, as compensation for the expense and trouble incurred in landing and depositing the same in the custom-house.

Boat-note.

76. When any goods are water-borne for the purpose of being landed from any vessel and warehoused or cleared for home-consumption, or of being shipped for exportation on board of any vessel, there shall be sent, with each boat-load or other separate despatch[3] a boat-note specifying the number of packages so sent and the marks and numbers or other description thereof.

Each boat-note for goods to be landed shall be signed by an officer of the vessel, and likewise by the officer of Customs on board, if any such officer be on board, and shall be delivered on arrival to any officer of Customs authorized to receive the same.

Each boat-note for goods to be shipped shall be signed by the proper officer of Customs, and, if an officer of Customs is on board of the vessel on which such goods are to be shipped, shall be delivered to such officer. If no such officer be on board, every such boat-note shall be delivered to the master of the vessel, or to an officer of the vessel appointed by him to receive it.

The officer of Customs who receives any boat-note of goods landed, and the officer of the Customs, master or other officer, as the case may be, who receives any boat-note of goods shipped, shall sign the same and note thereon such particulars as the Chief Customs-authority may from time to time direct.

The Local Government may from time to time, by notification in the local official Gazette, suspend the operation of this section in any customs-port or part thereof.

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[1] For order in force under s. 74 in—
(1) Bengal, *see* Ben. R. and O.;
(2) Bombay as to stone ballast, *see* Bombay Government Gazette, 1896, Pt. I, p. 219;
(3) Burma as to use of private jetties in certain ports, *see* Bur. R. M.

[2] For such rules in force in—
(1) Bengal, *see* Ben. R. and O.; Calcutta Gazette, 1907, Pt. I, p. 2188; *ibid*, 1908, Pt. I, p. 1372.;
(2) Bombay and Karachi, *see* Bom. R. and O.;
(3) Burma, *see* Bur. R. M., and Burma Gazette, 1904, p. 193.;
(4) Madras, *see* Fort St. George Gazette, 1908, Pt. II, p. 551.

[3] The operation of this section in the port of Madras so far as it relates to export boat-notes has been suspended, *see* Fort St. George Gazette, 1883, Pt. I, p. 830.

Goods water-borne to be forthwith landed or shipped.

77. All goods water-borne for the purpose of being landed or shipped shall be landed or shipped without any unnecessary delay.

Such goods not to be transhipped without permission.

78. Except in cases of imminent danger, no goods discharged into or loaded in any boat for the purpose of being landed or shipped shall be transhipped into any other boat without the permission of an officer of Customs.

Power to prohibit plying of unlicensed cargo-boats.

79. The Local Government may declare with regard to any customs-port by notification in the local official Gazette, that, after a date therein specified, no boat not duly licensed and registered shall be allowed to ply as a cargo-boat for the landing and shipping of merchandise within the limits of such port.

Issue of licenses and registration of cargo-boats.

In any port with regard to which such notification has been issued, the Chief Officer of Customs or other officer whom the Local Government appoints in this behalf, may, subject to such [1]rules and on payment of such fees as the Local Government from time to time prescribes by notification in the local official Gazette, issue licenses for and register cargo-boats. Such officer may also, subject to rules so prescribed, cancel any license so issued.

Power to require goods to be weighed or measured on board before landing or after shipment.

80. The Customs-collector may, whenever he thinks fit, require that goods stowed in bulk, and brought by sea or intended for exportation, shall be weighed or measured on board ship before landing or after shipment, and may levy duty according to the result of such weighing or measurement.

CHAPTER IX.

Of Discharge of Cargo and Entry inwards of Goods.

Discharge of cargo may commence on receipt of due permission.

81. When an order for entry inwards of any vessel which has arrived in any Customs-port or a special pass permitting such vessel to break bulk has been given, the discharge of the cargo of such vessel may be proceeded with.

Goods not to leave ship unless entered in manifest.

82. Except as otherwise provided in this Act, no goods shall be allowed to leave any such vessel, unless they are entered in the original manifest of such vessel, or in an amended or supplementary manifest received under section 55.

Procedure in respect of goods not

[2] **83.** If the owner of any goods (except such as have been shown in the import-manifest as not to be landed) does not land such goods within such period

[1] As to Cargo-boat Rules in force in—
(1) certain ports in Bengal, *see* Ben. R. and O.;
(2) Bombay (Port), *see* Bom. R. and O.;
(3) Burma ports, *see* Bur. R. M.;
(4) The port of Karachi, *see* Bombay Government Gazette, 1897, Pt. I, p. 1517, and *ibid*, 1902, Pt. I, p. 837.

[2] For notification issued under this section in Madras, *see* Fort St. George Gazette, 1883, Pt. I, p. 830 ; in Bombay, *see* Bom. R. and O.

as is specified in the bill of lading of such goods, or, if no period is so specified, within such number of working days, not exceeding fifteen, after the entry of the vessel importing the same, as the Local Government from time to time appoints by notification in the official Gazette, or

Landed within time allowed.

if the cargo of any vessel, with the exception of only a small quantity of goods, has been discharged previously to the expiration of the period so specified or appointed, as the case may be—

the master of such vessel or, on his application, the proper officer of Customs, may then carry such goods to the custom-house, there to remain for entry.

The Customs-collector shall thereupon take charge of, and grant receipts for, such goods;

and if notice in writing has been given by the master that the goods are to remain subject to a lien for freight, primage, general average, or other charges of a stated amount, the Customs-collector shall hold such goods until he receives notice in writing that the said charges are paid.

Power to land small parcels.

84. At any time after the arrival of any vessel the Customs-collector may, with the consent of the master of such vessel, cause any small package or parcel of goods to be carried to the custom-house, there to remain for entry, in charge of the officers of Customs, during the remainder of the working days allowed under this Act for the landing of such package or parcel.

Notice regarding unclaimed packages.

If any package or parcel so carried to the custom-house remains unclaimed on the expiration of the number of working days so allowed for its landing, or at the time of the clearance outwards of the vessel from which it was landed, the master may give such notice as is provided in section 83, and the officer in charge of the custom-house shall thereupon hold such package or parcel as provided in that section.

Power to permit immediate discharge.

85. Notwithstanding anything contained in sections 83 and 84, the Customs-collector in any customs-port to which the Local Government, by notification in the local official Gazette, declares this section to be[1] applicable, may permit the master of any vessel, immediately on receipt of an order under section 57 or a special pass under section 59, to discharge the cargo of such vessel or any portion thereof into the custody of the ship's agents if willing to receive the same, for the purpose of landing the same forthwith—

(*a*) at the custom-house or any specified landing-place or wharf; or

(*b*) at any landing-place or wharf belonging to any Port Commissioners, Port Trust or other public body or company.

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[1] For notification declaring the section applicable to the port of—
Calcutta, *see* Calcutta Gazette, 1904, Pt. I, p. 1121;
Madras, *see* Fort St. George Gazette, 1885, Pt. I, p. 55;
Bombay, *see* Bom. R. and O.

Any ship's agent so receiving such cargo or portion shall be bound to discharge all claims for damage or short delivery which may be established in respect of the same by the owner thereof, and shall be entitled to recover from such owner his charges for service rendered, but not for commission or the like, where any agent for the landing of such cargo or portion has been previously appointed by the owner and such appointment is unrevoked.

The Customs-collector shall take charge of all goods discharged under clause (*a*) of this section, and otherwise proceed in relation thereto as provided in sections 83 and 88.

A public body or company at whose landing place or wharf any goods are discharged under clause (*b*) of this section shall not permit the same to be removed without an order in writing from the Customs-collector.

Entry for home consumption or warehousing.

86. The owner of any goods imported shall, on the landing thereof from the importing ship, make entry of such goods for home consumption or warehousing by delivering to the Customs-collector[1] a bill of entry thereof in duplicate, in such form and containing such particulars, in addition to the particulars specified in section 29, as may, from time to time, be prescribed by the Chief Customs-authority.

The particulars of such entry shall correspond with the particulars given of the same goods in the manifest of the ship.

Assessment of dutiable goods.

87. On the delivery of such bill the duty (if any) leviable on such goods shall be assessed, and the owner of such goods may then proceed to clear the same for home consumption, or warehouse them, subject to the provisions hereinafter contained.

Procedure in case of goods not cleared or warehoused within four months after entry of vessel.

88. If any goods are not entered and cleared for home consumption, or warehoused within four months from the date of entry of the vessel, such goods may, after due notice to the owner, if his address can be ascertained, and in the local official Gazette, be sold by public auction, and the proceeds thereof shall be applied, first, to the payment of freight, primage and general average, if the goods are held by the Customs-collector subject to such charges under notice given under section 83, 84 or 85; next to the payment of the duties which would be leviable on such goods if they were then cleared for home consumption, and next to the payment of the other charges (if any) payable to the Customs-collector in respect of the same.

The surplus, if any, shall be paid to the owner of the goods, on his application for the same: provided that such application be made within one year from the sale of the goods, or that sufficient cause be shown for not making it within such period.

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[1] For forms of bill of entry prescribed for use in—
Burma, *see* Bur. R. M.; Burma Gazette, 1906, Pt. IV, p. 588.
Madras, *see* Fort St. George Gazette, 1883, Pt. I, p. 836.

If any goods of which the Customs-collector has taken charge under section 83, 84 or 85 be of a perishable nature, the Customs-collector may at any time direct the sale thereof, and shall apply the proceeds in like manner : Power to direct sale of perishable goods.

Provided that, where any goods liable to be sold under this section are arms, ammunition or military stores, they may be sold or otherwise disposed of at such place (whether within or without British India), and in such manner as the Local Government may from time to time direct : Proviso.

Provided also that nothing in this section shall authorize the removal for home consumption of any dutiable goods without payment of duties of customs thereon.

CHAPTER X.

Of Clearance of Goods for Home Consumption.

89. When the owner of any goods entered for home consumption, and (if such goods be liable to duty) assessed under section 87, has paid the import-duty (if any) assessed on such goods and any charges payable under this Act in respect of the same, the Customs-officer may make an order clearing the same ; and such order shall be sufficient authority for the removal of such goods by the owner. Clearance for home consumption.

CHAPTER XI.

Warehousing.

Of the Admission of Goods into a Warehouse.

90. When any dutiable goods have been entered for warehousing and assessed under section 87, the owner of such goods may apply for leave to deposit the same in any warehouse appointed or licensed under this Act. Application to warehouse.

91. Every such application shall be in writing signed by the applicant, and shall be in such form as is from time to time prescribed by the Chief Customs-authority.[1] Form of application.

92. When any such application has been made in respect of any goods the owner of the goods to which it relates shall execute a bond, binding himself, in a penalty of twice the amount of duty assessed under section 87 on such goods,— Warehousing bond.

(*a*) to observe all rules prescribed by this Act in respect of such goods ;

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[1] For bill of entry for bond prescribed for Burma, *see* Burma Gazette, 1906, Pt. IV p. 588 ; for Madras, *see* Fort St. George Gazette, 1883, Pt. I, p. 837.

(*b*) to pay, on demand, all duties, rent and charges claimable on account of such goods under this Act, together with interest on the same from the date of demand, at such rate[1] not exceeding six per cent. per annum as is for the time being fixed by the Chief Customs-authority; and

(*c*) to discharge all penalties incurred for violation of the provisions of this Act in respect of such goods.

Form of bond.

Every such bond shall be in the form marked A hereto annexed, or, when such form is inapplicable or insufficient, in such other form as is from time to time prescribed by the Chief Customs-authority,

and shall relate to the cargo or portion of the cargo of one vessel only.

Forwarding of goods to warehouse.

93. When the provisions of sections 91 and 92 have been complied with in respect of any goods, such goods shall be forwarded in charge of an officer of Customs to the warehouse in which they are to be deposited.

A pass shall be sent with the goods specifying the name of the importing vessel and of the bonder, the marks, numbers and contents of each package, and the warehouse or place in the warehouse wherein they are to be deposited.

Receipt of goods at warehouse.

94. On receipt of the goods, the pass shall be examined by the warehouse-keeper, and shall be returned to the Customs-collector.

No package, butt, cask or hogshead shall be admitted into any warehouse unless it bear the marks and numbers specified in, and otherwise correspond with, the pass for its admission.

If the goods be found to correspond with the pass, the warehouse-keeper shall certify to that effect on the pass, and the warehousing of such goods shall be deemed to have been completed.

If the goods do not so correspond, the fact shall be reported by the warehouse-keeper for the orders of the Customs-collector, and the goods shall either be returned to the custom-house in charge of an officer of Customs, or kept in deposit pending such orders as the warehouse-keeper deems most convenient.

If the quantity or value of any goods has been erroneously stated in the bill of entry, the error may be rectified at any time before the warehousing of the goods is completed, and not subsequently.

Goods how warehoused.

95. Except as provided in section 100, all goods shall be warehoused in the packages, butts, casks or hogsheads in which they have been imported.

Warrant to be given when goods are warehoused.

96. Whenever any goods are lodged in a public warehouse or a licensed private warehouse, the warehouse-keeper, or, in the case of the Bengal Bonded Warehouse Association, the Secretary of the said Association, shall deliver a warrant signed by him as such to the person lodging the goods.

Form of warrant.

Such warrant shall be in the form B hereto annexed, and shall be transferable by endorsement; and the endorsee shall be entitled to receive the goods

[1] For such rate of interest, *see* Fort St. George Gazette, 1890, Pt. II, p. 1082.

specified in such warrant on the same terms as those on which the person who originally lodged the goods would have been entitled to receive the same.

The Local Government may, by notification in the local official Gazette, exempt salt and salted fish from the operation of this section, and may in like manner cancel such exemption.

Rules relating to Goods in a Warehouse.

Access of Customs-officer to private warehouse.

97. The Customs-collector, or any officer deputed by him for the purpose, shall have access to any private warehouse licensed under this Act.

Power to cause packages lodged in warehouse to be opened and examined.

98. The Customs-collector may at any time by order in writing direct that any goods or packages lodged in any warehouse shall be opened, weighed or otherwise examined; and, after any goods have been so opened or examined, may cause the same to be sealed or marked in such manner as he thinks fit.

When any goods have been so sealed and marked after examination, they shall not be again opened without the permission of the Customs-collector; and, when any such goods have been opened with such permission, the packages shall, if he thinks fit, be again sealed or marked as before.

Access of owners to warehoused goods.

99.[1] Any owner of goods lodged in a warehouse shall, at any time within the hours of business, have access to his goods in presence of an officer of Customs, and an officer of Customs shall, upon application for the purpose being made in writing to the Customs-collector, be deputed to accompany such owner.

When an officer of Customs is specially employed to accompany such owner, a sum sufficient to meet the expense thereby incurred shall, if the Customs-collector so require, be paid by such owner to the Customs-collector, and such sum shall, if the Customs-collector so direct, be paid in advance.

Owner's power to deal with warehoused goods.

100. With the sanction of the Customs-collector, and after such notice given, and under such rules[2] and conditions as the Chief Customs-authority from time to time prescribes, any owner of goods may, either before or after warehousing the same,—

(*a*) sort, separate, pack and repack the goods, and make such alteration therein as may be necessary for the preservation, sale, shipment or disposal thereof (such goods to be repacked in the packages in which they were imported, or in such other packages as the Customs-collector permits);

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1 For scale of fees to be levied on oil delivered from the Budge-Budge warehouse, *see* Ben. R. and O.

For scale of fees for Preventive officers appointed to the charge of private bonded warehouses, *see* Bur. R. M.

2 For such rules in—

Bengal, *see* Ben. R. and O.:

Madras, *see* Fort St. George Gazette, 1883, Pt. I, p. 838;

Bombay, *see* Bom. R. and O.

(*b*) fill up any casks of wine, spirit or beer from any casks of the same secured in the same warehouse;

(*c*) mix any wines or spirit of the same sort secured in the same warehouse, erasing from the cask all import brands, unless the whole of the wine or spirit so mixed be of the same brand;

(*d*) bottle-off wine or spirit from any casks;

(*e*) take such samples of goods as may be allowed by the Customs-collector with or without entry for home consumption, and with or without payment of duty, except such as may eventually become payable on a deficiency of the original quantity.

After any such goods have been so separated and repacked in proper or approved packages, the Customs-collector may, at the request of the owner of such goods, cause or permit any refuse, damaged or surplus goods remaining after such separation or repacking (or, at the like request, any goods which may not be worth the duty) to be destroyed, and may remit the duty payable thereon.

Payment of rent and warehouse-dues.

101. If goods be lodged in a public warehouse, the owner shall pay monthly, on receiving a bill or written demand for the same from the Customs-collector or other officer deputed by him in that behalf, rent and warehouse-dues at such rates as the Chief Customs-authority or such officer of Customs as such authority from time to time appoints in this behalf may fix.[1]

A table of the rates of rent and warehouse-dues so fixed shall be placed in a conspicuous part of such warehouse.

If any bill for rent or warehouse-dues presented under this section is not discharged within ten days from the date of presentation, the Customs-collector may, in the discharge of such demand (any transfer or assignment of the goods notwithstanding) cause to be sold by public auction, after due notice in the local official Gazette, such sufficient portion of the goods as he may select.

Out of the proceeds of such sale, the Customs-collector shall first satisfy the demand for the discharge of which the sale was ordered and shall then pay over the surplus (if any) to the owner of the goods:

Provided that the application for such surplus be made within one year from the date of the sale of the goods or that sufficient cause be shown for not making it within such period.

Goods not to be taken out of warehouse, except as provided by this Act.

102. No warehoused goods shall be taken out of any warehouse, except on clearance for home consumption or shipment, or for removal to another warehouse, or as otherwise provided by this Act.

Period for

103. Any goods warehoused may be left in the warehouse, in which they

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1 For fixing rent in certain places in Burma, *see* Bur. R. M.; for Karachi, *see* Bom. R. and O.

are deposited, or in any warehouse to which they may in manner hereinafter provided be removed, till the expiry of three years after the date of the bond executed in relation to such goods under section 92. The owner of any goods remaining in a warehouse on the expiry of such period shall clear the same for home consumption or shipment in manner hereinafter provided: which goods may remain warehoused under bond.

Provided that when the license for any private warehouse is cancelled, and the Customs-collector gives notice of such cancelment to the owner of any goods deposited in such warehouse, such owner shall in manner hereinafter provided, and within seven days from the date on which such notice is given, remove such goods to another warehouse or clear them for home consumption or shipment. Goods in private warehouse on cancellation of license.

Of the Removal of Goods from one Warehouse to another.

104. Any owner of goods warehoused under this Act may, at any time within three days from the date of the bond executed in respect of such goods under section 92, and with the permission of the Chief Customs-officer, and on such conditions and after giving such security (if any) as such officer directs, remove goods from one warehouse to another warehouse in the same port. Power to remove goods from one warehouse to another in same port.

When any owner desires so to remove any goods, he shall apply for permission to do so in such form as the Chief Customs-authority from time to time prescribes.

[1]**105.** Any owner of goods warehoused at any warehousing port may, from time to time, within the said period of three years, remove the same by sea or by inland carriage, in order to be re-warehoused at any other warehousing port. Power to remove goods from one port to another.

When any owner desires so to remove any goods for such purpose, he shall apply to the Chief Customs-officer, stating the particulars of the goods to be removed, and the name of the port to which it is intended that they shall be removed, together with such other particulars, and in such manner and form, as the Chief Customs-authority from time to time prescribes. Procedure.

[2]**106.** When permission is granted for the removal of any goods from one warehousing port to another under section 105, an account containing the particulars thereof shall be transmitted by the proper officer of the port of removal to the proper officer of the port of destination; Transmission of account of goods to officers at port of destination.

and the person requiring the removal shall before such removal enter into a bond, with one sufficient surety, in a sum equal at least to the duty chargeable on such goods, for the due arrival and re-warehousing thereof at the port of destination within such time, as the Chief Customs-authority directs. Bond for due arrival and re-warehousing.

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[1] For rules under this section for Bengal as to the removal of non-duty paid salt made in conjunction with ss. 9 and 130, *see* Ben. R. and O.

[2] For the form of bond prescribed under this section, *see* Fort St. George Gazette, 1883, Pt. I, p. 838.

Such bond may be taken by the proper officer either at the port of removal or at the port of destination as best suits the convenience of the owner.

If such bond is taken at the port of destination, a certificate thereof, signed by the proper officer of such port, shall, at the time of the removal of such goods, be produced to the proper officer at the port of removal; and such bond shall not be discharged unless such goods are produced to the proper officer, and duly re-warehoused at the port of destination within the time allowed for such removal, or are otherwise accounted for to the satisfaction of such officer; nor until the full duty due upon any deficiency of such goods, not so accounted for, has been paid.

Remover may enter into a general bond.

107. The Chief Customs-authority may permit any person desirous of removing warehoused goods to enter into a general bond, with such sureties, in such amount, and under such conditions, as the Chief Customs-authority approves, for the removal, from time to time, of any goods from one warehouse to another, either in the same or in a different port, and for the due arrival and re-warehousing of such goods at the port of destination within such time as such authority directs.

Goods on arrival at port of destination to be subject to same laws as goods on first importation.

108. Upon the arrival of warehoused goods at the port of destination, they shall be entered and warehoused in like manner as goods are entered and warehoused on the first importation thereof, and under the laws and rules, in so far as such laws and rules are applicable, which regulate the entry and warehousing of such last-mentioned goods.

Bond under section 92 to continue in force notwithstanding removal.

109. Every bond executed under section 92 in respect of any goods shall, unless the Chief Officer of Customs in any case deems a fresh bond to be necessary, continue in force, notwithstanding the subsequent removal of such goods to another warehouse or warehousing port.

Clearance for Home Consumption or Shipment.

Clearance of bonded goods for home consumption.

[1] 110. Any owner of goods warehoused may, at any time within three years from the date of the bond executed under section 92 in respect of such goods, clear such goods for home consumption by paying (*a*) the duty assessed on such goods under section 87, or, where the duty on such goods is altered under the provisions hereinafter contained, such altered duty; and (*b*) all rent, penalties, interest and other charges payable to the Customs-collector in respect of such goods.

Clearance of same for shipment to

111. Any owner of goods warehoused may, at any time within three years from the date of the bond executed under section 92 in respect of such goods,

[1] For scale of fees to be levied on oil delivered from the Budge-Budge warehouse, *see* Ben. R. and O.

clear such goods for shipment to a foreign port on payment of all rent, penalties, interest and other charges payable as aforesaid and without payment of import-duty on the same : foreign port.

Provided that the Governor General in Council may[1] prohibit the shipment for exportation to any specified foreign port of warehoused goods in respect of which payment of drawback or transhipment has been prohibited under section 49 or 134 respectively.

112. Provisions and stores warehoused at the time of importation may, within the said period of three years, be shipped without payment of duty for use on board of any vessel proceeding to a foreign port. Clearance of same for shipment as provisions, etc., on vessel proceeding to foreign ports.

113. Application to clear goods from any warehouse for home consumption or for shipment shall be made in such form as the Chief Customs-authority from time to time prescribes.[2] Form of application for clearance of goods.

Such application shall ordinarily be made to the Customs-collector at least twenty-four hours before it is intended so to clear such goods. Application when to be made.

114. If any goods upon which duties are leviable *ad valorem* or on a tariff-valuation receive damage through unavoidable accident after they have been entered for warehousing and assessed under section 87, and before they are cleared for home consumption, they shall, if the owner so desires, be re-assessed for duty according to their actual value, and a new bond for the same may, at the option of the owner, be executed for the unexpired term of warehousing. Re-assessment of warehoused goods when damaged.

115. If, after any goods entered for warehousing have been assessed under section 87, any alteration is made in the duty leviable upon such goods or in the tariff valuation (if any) applicable thereto, such goods shall be re-assessed in accordance with [3] [such alteration]. Re-assessment on alteration of duty or tariff valuation.

116. If it appear at the time of clearing any wine, spirit, beer or salt from any warehouse for home consumption that there exists a deficiency not otherwise accounted for to the satisfaction of the Customs-collector, an allowance on account of ullage and wastage shall be made in adjusting the duties thereon, as follows (namely) :— Allowance in case of wine, spirit, beer or salt.

(*a*) upon wine, spirit[4] and beer in cask to an extent not exceeding the rates specified below, or such other rates as may, from time to time, be

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[1] *See* second note to s. 49 (*b*), *supr* .

[2] For bill of entry form bond prescribed for Burma, *see* Burma Gazette, 1906, Pt. IV, p. 589 ; for Madras, *see* Fort St. George Gazette, 1883, Pt. I, p. 839.

[3] These words were substituted for the words " the second proviso to s. 37 " by s. 2 of the Sea Customs Act (1878) Amendment Act, 1889 (VIII of 1889), General Acts, Vol. IV.

[4] As to spirit wastage allowed in Madras, *see* Fort St. George Gazette, 1887, Pt. I, p. 766.

prescribed in this behalf by the Local Government and notified in the official Gazette :

For any time not exceeding	6	months,	2½ per cent.
exceeding 6 months and not exceeding	12	,,	5 ,,
exceeding 12 months and not exceeding	18	,,	7½ ,,
exceeding 18 months and not exceeding	2	years,	10 ,,
exceeding 2 years and not exceeding	3	,,	12 ,,

(*b*) in the case of [1]salt warehoused in a public warehouse, only the amount actually cleared shall be charged with customs-duties :

(*c*) in the case of salt warehoused in a private warehouse, wastage shall be allowed at such rate as may be prescribed from time to time by the Local Government and notified in the local official Gazette.

Further special allowance.

117. When any wine, spirit, beer or salt lodged in a warehouse is found to be deficient at the time of the delivery therefrom, and such deficiency is proved to be due solely to ullage or wastage, the Chief Customs-authority may direct, in respect of any such article, that allowance be made in any special case for a rate of ullage or wastage exceeding that contemplated in section 116.

Of the Forfeiture and Discharge of the Bond.

If goods are improperly removed from warehouses or allowed to remain beyond time fixed, or lost or destroyed,

118. If any warehoused goods are removed from the warehouse in contravention of section 102 ; or

if any such goods have not been removed from the warehouse at the expiration of the time during which such goods are permitted by section 103 to remain in such warehouse ; or

if any goods in respect of which a bond has been executed under section 92, and which have not been cleared for home consumption or shipment, or removed under this Act, are lost or destroyed otherwise than as provided in section 100 or as mentioned in section 122, or are not accounted for to the satisfaction of the Customs-collector ; or

or taken as samples, Collector may demand duty, etc.

if any such goods have been taken under section 100 as samples without payment of duty,

the Customs-collector may thereupon demand, and the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of such goods, together with all rent, penalties, interest and other charges payable to the Customs-collector on account of the same.

Procedure on failure to pay duty, etc.

119. If any owner fails to pay any sum so demanded, the Customs-collector may forthwith either proceed upon the bond executed under section 92, or cause such portion as he thinks fit of the goods (if any) in the warehouse

[1] As to salt wastage allowed in—
(1) Burma, *see* Bur. R. M.
(2) Madras, *see* Mad. R. and O.

on account of which the amount is due, to be detained with a view to the recovery of the demand;

and if the demand be not discharged within ten days from the date of such detention (due notice thereof being given to the owner), the goods so detained may be sold by public auction duly advertised in the local official Gazette.

The net proceeds of any sale so made of goods so detained shall be written off upon the bond in discharge thereof to the amount received, and if any surplus be obtained from such sale, beyond the amount of the demand, such surplus shall be paid to the owner of the goods: Provided that application for the same be made within one year from the sale, or that sufficient cause be shown for not making the application within such period.

No transfer or assignment of the goods shall prevent the Customs-collector from proceeding against such goods in the manner above provided, for any amount due thereon.

Noting removal of goods.

120. When any warehoused goods are taken out of any warehouse, the Customs-collector shall cause the fact to be noted on the back of the bond.

Every note so made shall specify the quantity and description of such goods the purposes for which they have been removed, the date of removal, the name of the person removing them, the number and date of the shipping bill under which they have been taken away if removed for exportation by sea or of the bill of entry if removed for home consumption and the amount of duty paid (if any).

Register of bonds.

121. A register shall be kept of all bonds entered into for customs-duties on warehoused goods, and entry shall be made in such register of all particulars required by section 120 to be specified.

Cancellation and return of bonds.

When such register shows that the whole of the goods covered by any bond have been cleared for home consumption or shipment, or otherwise duly accounted for, and when all amounts due on account of such goods have been paid, the Customs-collector shall cancel such bond as discharged in full, and shall on demand deliver it, so cancelled, to the person who has executed or who is entitled to receive it.

Miscellaneous.

Power to remit duties on warehoused goods lost or destroyed.

122. If any goods in respect of which a bond has been executed under section 92 and which have not been cleared for home consumption are lost or destroyed by unavoidable accident or delay, the Chief Customs-authority may in its discretion remit the duties due thereon:

Provided that, if any such goods be so lost or destroyed in a private warehouse, notice thereof be given to the Customs-collector within forty-eight hours after the discovery of such loss or destruction.

Responsibility of

123. The warehouse-keeper in respect of goods lodged in a public warehouse, and the licensee in respect of goods lodged in a private warehouse, shall

warehouse-keeper.

be responsible for their due reception therein and delivery therefrom, and for their safe custody while deposited therein, according to the quantity, weight or gauge reported by the Custom-house-officer who has assessed such goods, allowance being made if necessary, for ullage and wastage as provided in sections 116 and 117:

Compensation for loss or injury.

Provided that no owner of goods shall be entitled to claim from the Customs-collector, or from any keeper of a public warehouse, compensation for any loss or damage occurring to such goods while they are being passed into or out of such warehouse, or while they remain therein, unless it be proved that such loss or damage was occasioned by the wilful act or neglect of the warehouse-keeper or of an officer of Customs.

Public warehouse to be locked.

124. Every public warehouse shall be under the lock and key of a warehouse-keeper appointed by the Chief Officer of Customs.

Power to decide where goods may be deposited in public warehouse, and on what terms.

125. The Chief Customs-authority, or such officer of Customs as such authority from time to time appoints in this behalf, may from time to time determine in what division of any public warehouse, and in what manner, and on what terms, any goods may be deposited, and what sort of goods may be deposited in any such warehouse.

Expenses of carriage, packing, etc., to be borne by owners.

126. The expenses of carriage, packing and stowage of goods on their reception into or removal from a public warehouse shall, if paid by the Customs-collector or by the warehouse-keeper, be chargeable on the goods and be defrayed by, and recoverable from, the owner, in the manner provided in section 119.

Bengal Bonded Warehouse Association.

127. All the provisions of this Act relating to private warehouses shall be applicable to the warehouses wherein the Bengal Bonded Warehouse Association receives bonded goods.

CHAPTER XII.

TRANSHIPMENT.

Power to permit transhipment without payment of duty.

128. In the ports of Calcutta, Madras, Bombay, Karwar, Karachi, Aden, Rangoon, Maulmain, Akyab, Chittagong and such other ports as the Governor General in Council may from time to time, by notification in the Gazette of India, direct in this behalf,[1] the Customs-collector may, on application by the owner of any goods imported into such port, and specially and distinctly manifested at the time of importation as for transhipment to some other customs or foreign port, grant leave to tranship the same without payment of the duty (if any) leviable at the port at transhipment, and without any security or bond for the due arrival and entry of the goods at the port of destination.

[1] For notification adding Nagapatam to the above list of ports, *see* Gazette of India, 1901, Pt. I, p. 31.

(*Chapter XII.—Transhipment.*)

In any customs-port other than a port in which the preceding clause may for the time being be in force, the Customs-collector may, on application by the owner of any goods so imported and manifested, grant leave for transhipment without payment of the duty (if any) leviable at such port: Provided that, where the goods so transhipped are dutiable, and are to be removed to some other customs-port, the applicant shall enter into a bond,[1] with such security as may be required of him, in a sum equal at least to the duty chargeable on such goods, for the due arrival and entry thereof at the port of destination within such time as such Customs-collector directs.

Superintendence of transhipment.

129. An officer of Customs shall, in every case, be deputed free of charge to superintend the removal of transhipped goods from vessel to vessel.

Subsidiary rules as to transhipment.

130. The powers conferred on the Customs-collector by section 128 shall be exercised, and the transhipment shall be performed, subject to such [2]rules as may from time to time be made by the Local Government.

No rules made under this section shall come into force until after the expiry of such reasonable time from the date of the publication of the same as the Local Government may in each case appoint in this behalf.

Entry and warehousing on arrival of goods transhipped under section 128, clause 2.

131. All goods transhipped under the second clause of section 128 for removal to a customs-port shall, on their arrival at such port, be entered in like manner as goods are entered on the first importation thereof, and under the laws and rules, in so far as such laws and rules can be made applicable, which regulate the entry of such last-mentioned goods.

Transhipment of provisions and stores from one vessel to another of same owner without payment of duty.

132. If two or more vessels belonging wholly or in part to the same owner be at any customs-port at the same time, any provisions and stores in use or ordinarily shipped for use on board may, at the discretion of the Customs-collector, be transhipped from one such vessel to any other such vessel without payment of import-duty.

Levy of transhipment-fee.

133. [3]A transhipment-fee on any goods or class of goods transhipped under this Act may be levied at such rates, on each bale or package, or according to weight, measurement, quantity or number, and under such rules, as the Local Government, with the previous sanction of the Governor General in Council, may from time to time, by notification in the local official Gazette, prescribe for each port.

134. The Governor General in Council may from time to time, by Power to

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1 For form of such bond, *see* Fort St. George Gazette, 1883, Pt. I, p. 839.

2 For rules for the transhipment of goods in ports in—
(1) Bengal, as to transhipment of salt, *see* Ben. R. and O.; *see* also note to s. 9, *supra*;
(2) Bombay, *see* Bom. R. and O.;
(3) Burma, *see* Bur. R. M.; and
(4) Madras, *see* Mad. R. and O.

3 For transhipment-fee leviable at (1) Bengal, *see* Ben. R. and O.; (2) Bombay ports and Karachi on certain goods, *see* Bom. R. and O.; (3) Madras, *see* Fort St. George Gazette, 1899, Pt. I, p. 933; *ibid*, 1901, Pt. I, p. 137; and (4) Burma ports, *see* Bur. R. M.

prohibit transhipment.

notification in the Gazette of India,[1] prohibit, at any specified port, or at all ports, the transhipment of any specified class of goods, generally or when destined for any specified ports, or prescribe any special mode of transhipping any specified class of goods.

No goods to be transhipped except as provided.

135. Except as provided in this Act, no goods shall be transhipped at any port or place in British India.

CHAPTER XIII.

EXPORTATION OR SHIPMENT AND RE-LANDING.

No goods to be shipped, etc., till entry outwards of vessel.

136. Except with the written permission of the Customs-collector, no goods other than passengers' baggage, or ballast urgently required for a vessel's safety, shall be shipped or water-borne to be shipped in any vessel in a customs-port until an order has been obtained under section 61 for entry outwards of such vessel.

When such order has been obtained, the export-cargo of such vessel may be shipped, subject to the provisions next hereinafter contained.

Clearance for shipment.

137. Unless the Chief Customs-authority shall, in the case of any customs-port or wharf, or of any class of goods, otherwise direct by notification in the local official Gazette, no goods, except passengers' baggage, shall be shipped or water-borne to be shipped for exportation until—

(*a*) the owner has delivered to the Customs-collector, or other proper officer,[2] a shipping bill of such goods in duplicate, in such form and containing such particulars in addition to those specified in section 29 as may from time to time be prescribed by the Chief Customs-authority;

(*b*) such owner has paid the duties (if any) payable on such goods; and

(*c*) such bill has been passed by the Customs-collector.

Bond required in certain cases before exportation.

[3]**138.** Before any warehoused goods or goods subject to excise-duties, or goods entitled to drawback of customs-duties on exportation, or goods exportable only under particular rules or restrictions, are permitted to be exported, the owner shall, if required so to do, give security by bond in such sum, not exceeding twice the duty leviable on such goods, as the Customs-collector directs,

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1 For list of such notifications, *see* Gen. R. and O., and *see* note to s. 49 (*b*), *supra*.

2 As to rule in force in the Port of Bombay and in Sindh, in regard to shipment on incomplete bills, *see* Bom. R. and O.

For forms of shipping-bills prescribed in Burma for free and dutiable goods, *see* Bur. R. M.; Burma Gazette, 1906, Pt. IV, p. 587; in Madras, *see* Fort St. George Gazette, 1883, Pt. I, p. 840.

3 For rules for the export of salt to British Indian ports, see Mad. R. and O.

with one sufficient surety, that such goods shall be duly shipped, exported and landed at the place for which they are entered outwards, or shall be otherwise accounted for to the satisfaction of such officer.

Additional charge on goods cleared for shipment after port-clearance granted.

139. When goods are cleared for shipment on a shipping bill presented after port-clearance has been granted, the Customs-collector may, if he thinks fit, levy, in addition to any duty to which such goods are ordinarily liable, a charge not exceeding—

(*a*) in the case of goods liable to duties on fixed tariff-valuations, one per cent. on the tariff-value ;

(*b*) in the case of all other goods, one per cent. on the market-value.

Nothing in this section shall apply to any shipment of treasure or opium.

Notice of non-shipment or re-landing, and return of duty thereon.

[1]**140.** If any goods mentioned in a shipping bill or manifest be not shipped, or be shipped and afterwards re-landed, the owner shall, before the expiration of five clear working days, after the vessel on which such goods were intended to be shipped, or from which they were re-landed, has left the port, give information of such short shipment or re-landing to the Customs-collector.

Upon an application being made to the Customs-collector, any duty levied upon goods not shipped, or upon goods shipped and afterwards re-landed, shall be refunded to the person on whose behalf such duty was paid : Provided that no such refund shall be allowed unless information has been given as above required.

Goods re-landed or transhipped from a vessel returning to port, or putting into another port.

141. If, after having cleared from any customs-port, any vessel, without having discharged her cargo, returns to such port, or puts into any other customs-port, any owner of goods in such vessel, if he desires to land or tranship the same or any portion thereof for re-export, may, with the consent of the master, apply to the Customs-collector in that behalf.

The Customs-collector, if he grant the application, shall thereupon send an officer of Customs to watch the vessel, and to take charge of such goods during such re-landing or transhipment.

Such goods shall not be allowed to be transhipped or re-exported free of duty by reason of the previous settlement of duty at the time of first export, unless they are lodged and remain, until the time of re-export, under the custody of an officer of Customs, in a place appointed by the Customs-collector, or are transhipped under such custody.

All expenses attending such custody shall be borne by the owner.

Vessel returning to port may enter and land goods under import-rules.

142. In either of the cases mentioned in section 141, the master of the vessel may enter such vessel inwards, and any owner of goods therein may, with the consent of the master, land the same under the rules herein contained for the importation of goods.

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[1]For rules for the adjustment and payment of refunds on short shipment issued under this section, *see* Bur. R. M.

In every such case, any export-duty levied shall be refunded to, and any amount paid in drawback shall be recovered from, such owner.

Landing of cargo during repairs.

143. The Customs-collector may, on application by the master of any vessel which is obliged before completing her voyage to put into any customs-port for repairs, permit him to land the cargo, or any portion thereof, and to place it in the custody of an officer of Customs during such repairs, and to re-ship and export the same free of duty.

All expenses attending such custody shall be borne by the master.

CHAPTER XIV.

SPIRIT.

Exportation of Spirit under Bond for Excise-duty.

Rules for removal of spirit from distillery, without payment of duty, for exportation.

144. The Chief Customs-authority may from time to time make rules [1] prescribing the conditions on which spirit manufactured in British India may be removed from any licensed distillery for exportation without payment of excise-duty.

The person so removing any such spirit shall execute a bond with one or more sureties, in the form marked C hereto annexed, or (when such form is inapplicable or insufficient) in such other form as the said Authority from time to time prescribes, conditioned that such duty shall be paid on all such spirit as is—

(*a*) not exported within four months from the date of the bond, or

(*b*) exported to a customs-port, unless [2][either] the payment of excise-duty as provided by this Chapter in respect thereof at the port of destination[2] [or the delivery of the spirit into a warehouse appointed in this behalf by the Local Government having authority at that port] is within six months from the date of the bond proved to the satisfaction of the proper officer.

The Chief Officer of Customs of the port of exportation may, on sufficient cause shown, extend for a further term not exceeding four months the period allowed for the exportation of any such spirit, of for the production of such proof that duty has been [3] [so paid or the spirit so delivered].

Spirit for export to be

145. Spirit intended for exportation under bond for the excise-duty shal

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[1] For such rules, *see* Ben. R. and O.; Mad. R. and O.

[2] These words were inserted by s. 1 (*1*) of the Sea Customs Act (1878) Amendment Act, 1887 (II of 1887), General Acts, Vol. IV.

[3] These words were substituted for the word "paid" by Act II of 1887, s. 1 (*2*), *ibid.*

[1][except when provision is made by any enactment for the time being in force for its being intermediately deposited in a licensed warehouse,] be taken from the distillery direct to the custom-house, under passes to be granted for that purpose by the officers of Excise. taken direct from distillery to Custom-house under pass.

146. Spirit brought to the custom-house for exportation under bond for the excise-duty [2] [may], previous to shipment, be gauged and proved by an officer of Customs, and the quantity of spirit for which credit is to be given in the settlement of any bond [2] [may] be determined in the same manner. Gauging and proving of spirit.

147. Excise duty shall be recoverable previous to shipment upon the excess (if any) of the quantity of spirit passed from a distillery over the quantity ascertained by gauge and proof at the custom-house, less an allowance for ullage and wastage at such rates as are from time to time prescribed by the Local Government and notified in the local official Gazette. Duty to be recovered on any deficiency in spirit under bond.

XI of 1882. **148.** [3][Notwithstanding anything in the [4] Indian Tariff Act, 1882,] spirit exported under bond for excise-duty from any customs-port to any other customs-port shall be charged at the port of importation with excise-duty at the ordinary rate to which the spirit of the like kind and strength is liable at such port : Duty on spirit exported under bond from one Indian port to another.

[5]Provided that the Local Government may authorize the import of such spirit without the payment of that duty at the port of importation when the spirit is to be delivered into a warehouse appointed by the Local Government in this behalf, and the excise-duty thereon is to be paid on the removal of the spirit from a warehouse so appointed.

149. Spirit brought to the custom-house [6][or to a warehouse licensed under any enactment for the time being in force] for exportation under bond for the excise-duty may, on payment of such duty, be removed for local consumption under passes to be granted for that purpose by the officers of Excise. Removal for local consumption of spirit intended for exportation.

Credit for every such payment shall be given in discharge of the bond to which it relates.

Drawback of Excise-duty on Export of Spirit.

[7]**150.** A drawback of excise-duty paid on spirit manufactured in British Drawback of

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1 These words were inserted by the Excise and Sea Customs Law Amendment Act, 1885 (IX of 1885), General Acts, Vol. III.

2 "May" was substituted for "shall" by s. 2 of the Sea Customs Act (1878) Amendment Act, 1887 (II of 1887), General Acts, Vol. IV.

3 These words were prefixed by Act II of 1887, s. 3 (*1*), *ibid.*

4 *See* now the Indian Tariff Act, 1894 (VIII of 1894), General Acts, Vol. IV.

5 This proviso was added by Act II of 1887, s. 3 (*2*).

6 These words were inserted by s. 5 (*2*) of the Excise and Sea Customs Law Amendment Act, 1885 (IX of 1885), General Acts, Vol. III.

7 As to the application of the provisions of s. 150 to malt liquor, *see* s. 9 of the Excise (Malt Liquors) Act, 1890 (XIII of 1890), General Acts, Vol. IV.

excise-duty on spirit exported.

India and exported to any foreign port under the provisions of section 138 shall be allowed by the Customs-collector at the port of exportation :

Provided that the exportation be made within one year from the date of payment of such excise-duty, and that the spirit, when brought to the custom-house, be accompanied by a pass in which such payment is certified.

Such drawback shall be regulated by the strength and quantity of such spirit as ascertained by gauge and proof by an officer of Customs.

Miscellaneous.

Differential duty to be levied in certain cases.

151. [1][Notwithstanding anything in the [2]Indian Tariff Act, 1882,] if spirit manufactured in British India upon which excise-duty has been paid is exported from one customs-port to another, and the rate of local excise-duty at the port of importation is higher than that already paid upon such spirit, a differential duty shall be charged thereon, at such rate as the Local Government at such port may, by notification in the local official Gazette, from time to time prescribe : [3] XI of 1882.

[4]Provided that the Local Government may authorize the import of such spirit without the payment of the differential duty at the port of importation when the spirit is to be delivered into a warehouse appointed by the Local Government in this behalf, and the differential duty is to be paid on the removal of the spirit from a warehouse so appointed.

Rum-shrub, etc., how charged with duty.

152. Rum-shrub, cordial and other such liquor prepared in a licensed distillery under the supervision of the surveyor or officer in charge of the distillery shall be charged with excise-duty under this Act according to the quantity of spirit used in its preparation as ascertained by such surveyor or officer.

Provisions respecting spirit applied to such liquors.

The provisions of this Act respecting spirit, except such as relate to gauge and proof, shall apply to such liquor.

Conditions of drawback and remission of duty on spirit.

153. No drawback shall be allowed for any spirit on which duty has been paid, nor shall the duty due on any spirit under bond be remitted, unless the spirit is shipped from the custom-house, and in a vessel whereon an officer of Customs has been appointed to superintend the receipt of export-cargo.

Re-land of spirit shipped.

154. No spirit shipped for exportation shall be relanded without a special pass from an officer of Excise, in addition to any permission of an officer of Customs which may be required by the law for the time being in force.

Power to make rules for ascertain-

155. When by any law for the time being in force a special duty is imposed on spirit rendered unfit for human consumption, the Local Government may

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[1] These words were prefixed by s. 4 (*1*) of the Sea Customs Act (1878) Amendment Act, 1887 (II of 1887), General Acts, Vol. IV.

[2] *See* now Act VIII of 1894, General Acts, Vol. IV.

[3] For notification modifying the rate of excise-duty on spirits manufactured in India and imported into Burma when duty has already been paid out of Burma, *see* Burma Gazette, 1906, Pt. I, p. 157.

[4] This proviso was added by Act II of 1887, s. 4 (*2*), General Acts, Vol. IV.

from time to time make [1]rules for ascertaining and determining what spirit imported into British India shall be deemed to have been effectually and permanently so rendered unfit, and for causing such spirit to be so rendered, if necessary, by their own officers, and at the expense of the person importing the same, before the customs-duties leviable thereon are levied.

Rules declaring that imported spirit has been rendered unfit for human consumption.

In the absence of any such rules, or if any dispute arises as to their applicability, the Chief Customs-officer shall decide what spirit is subject only to the said special duty, and such decision shall be final.

Decision where no rules, or their applicability disputed.

CHAPTER XV.

COASTING TRADE.

156. Except as hereinafter provided, nothing in Chapters VII, IX, X and sections 136, 139 and 141 to 143 inclusive, of this Act, shall apply to coasting vessels or to goods imported or exported in such vessels.

Chapters VII, IX, X and part of XIII inapplicable to coasting trade.

157. The Local Government may, from time to time, make rules consistent with the provisions of this Chapter,—

Power to regulate coasting trade.

(*a*) extending [2] any provision of the Chapters and sections mentioned in section 156, with or without modification, to any coasting vessels or to any goods imported or exported in such vessels;

(*b*) exempting any such vessels or goods from any of the other provisions of this Act except those contained in this Chapter;

[3](*c*) prescribing the conditions on which goods, or any specified class of goods, may be (1) carried in a coasting vessel, whether shipped at a foreign port, or at a customs-port, or at a place declared under section 12 to be a port; (2) shipped in a coasting vessel before all

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[1] For rules for the importation of spirits rendered unfit for human consumption made by the Government of—
(1) Bengal, *see* Ben. R. and O.;
(2) Bombay, *see* Bombay Government Gazette, 1902, Pt. I, p. 1906;
(3) Burma, *see* Burma Gazette, 1899, Pt. I, p. 347;
(4) Madras, *see* Fort St. George Gazette, 1899, Pt. I, p. 1066.

[2] For orders extending certain sections to coasting vessels or classes of vessels in force in—
(1) Bengal, *see* Ben. R. and O.;
(2) Bombay, *see* Bom. R. and O.;
(3) Burma, *see* Bur. R. M.;
(4) Madras, *see* Mad. R. and O.

[3] For rules regulating the coasting trade generally or particularly in respect of a place or articles carried, which are in force in—
(1) Bengal, *see* Ben. R. and O., and as to rules regarding the conditions under which husked and unhusked rice may be shipped from the Port of Nillah, *see* Gazette of India, 1905, Pt. II, p. 659;
(2) Bombay, *see* Bom. R. and O.;
(3) Burma, *see* Bur. R. M.;
(4) Madras, *see* Mad. R. and O.

dutiable goods and goods brought in such a vessel from a foreign port have been unladen ;

(*d*) prohibiting the conveyance of any specified class of goods generally, or to or between specified ports in a coasting vessel.

Coasting vessels to deliver manifest and obtain port-clearance before leaving port of lading.

[1]158. Before any coasting vessel departs from the port of lading, or, when there are more ports of lading than one, the first port of lading, the master shall fill in, sign and deliver to the Customs-collector a manifest in duplicate, containing a true specification of all goods to be carried in such vessel, in such form, and accompanied by such shipping bills or other documents, as may from time to time be prescribed[2] by the Chief Customs-authority.

If the Customs-collector sees no objection to the departure of the vessel, he shall retain the duplicate and return the original manifest, dated and signed by him, together with its accompaniments ; and such manifest shall be the port-clearance of the vessel, unless, under the general orders of the Chief Customs-authority, a separate port-clearance be prescribed.

Delivery of manifest, etc., on arrival.

159. Within twenty-four hours after the arrival of any coasting vessel at any customs-port, whether intermediate or final, and before any goods are there discharged, the manifest, together with the other documents referred to in section 158, shall be delivered to the Customs-collector, who shall note on the manifest the date of delivery.

If the vessel has touched at any foreign port between such port of arrival and her last preceding customs-port of departure, the master shall append to the manifest a declaration to that effect, and shall also indicate on the manifest the portions (if any) of the cargo therein described which have been discharged, and subjoin thereto a true specification of all goods shipped at such port.

If the customs-port of arrival be an intermediate port, and a portion only of the cargo is to be discharged thereat, the master shall likewise so deliver an extract from the manifest signed by him, relating to such portion, and the Customs-collector shall, after verifying such extract, return to him the original manifest and all documents accompanying it except those relating to such portion.

If in any case the cargo actually on board any coasting vessel on her arrival at any customs-port does not, owing to short shipment, re-landing or other cause, correspond with the specification thereof in the manifest returned to the master under the second clause of section 158, such master shall, before delivery of such manifest under this section, note thereon the particulars of the difference.

The Customs-collector, when satisfied with the manifest and other documents, shall grant an order to break bulk.

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[1] For rule for obtaining port-clearances by tindals of country coasting vessels, *see* Bombay Government Gazette, 1884, Pt. I, p. 491.

[2] For prescribed form of shipping bill in Burma, *see* Burma Gazette, 1906, Pt. IV, p. 700.

(*Chapter XV.--Coasting Trade.*)

Departure from intermediate port.

160. Before any coasting vessel departs from any customs-port at which she has touched during her voyage, the master shall re-deliver the original manifest to the Customs-collector, after indicating thereon the portions (if any) of the cargo therein described which have been discharged, and subjoining thereto a true specification of all goods shipped at such port. He shall also deliver a duplicate, signed by him, of the specification so subjoined.

If the Customs-collector sees no objection to the departure of the vessel, he shall proceed as prescribed in the second clause of section 158.

Power to require bond before port-clearance is granted.

[1]**161.** The Customs-collector may, for sufficient reason, refuse port-clearance to any coasting vessel declared to be bound to, or about to touch at, any customs-port, unless the owner or master gives a bond, with such security as the Customs-collector deems sufficient, for the production to the Customs-collector of a certificate from the proper officer of the port to which such vessel is said to be bound, of her arrival at such port within a reasonable time to be prescribed in each case by the Customs-collector.

Discharge of cargo.

162. When permission has been granted by the Customs-collector for the discharge of cargo from any coasting vessel—

(*a*) if the vessel has not touched at any intermediate foreign port in the course of her voyage, and has not on board any dutiable goods, the cargo may be forthwith landed and removed by the owner without entry thereof at the custom-house and clearance for home consumption, but subject to such general check and control as the Chief Customs-authority may from time to time by rules prescribe;

(*b*) if the vessel has so touched at any such port or has on board any such goods, such vessel shall be subject to all the provisions of Chapter VII of this Act relating to vessels arriving and such goods, and until such goods have been duly discharged all other goods on board shall be subject to the provisions of Chapter IX of this Act relating to goods imported.

Goods on coasting vessel, if excisable, not to be unladen without permission.

163. If any of the goods on board of any coasting vessel be subject to any excise-duty, they shall not be unladen without the permission of the proper officer of Excise.

Grant and revocation of general pass.

164. Notwithstanding anything hereinbefore contained, the Chief Customs-authority may authorize the Customs-collector to grant a general pass, on any [2]conditions which such Authority thinks expedient for the lading and clearance,

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[1] For notification issued under this section, *see* Fort St. George Gazette, 1883, Pt. I, p. 842.

[2] For General Pass Rules in force in—
(1) Bengal, *see* Ben. R. and O.;
(2) Bombay, *see* Bombay Government Gazette, 1883, Pt. II, p. 787;
(3) Burma, *see* Bur. R. M.; and
(4) Madras, *see* Fort St. George Gazette, 1889, Pt. II, p. 448.

and for the entry and unlading, of any coasting steam-vessel at any ports of despatch or destination, or at any intermediate ports at which she touches for the purpose of receiving goods or passengers.

Such pass shall be valid throughout British India, or for such ports only as may be specified therein.

Any such general pass may be revoked by order of the Chief Customs-authority by whom the grant thereof was authorized, by notice in writing under the hand of such Authority delivered to the master or to the owner of such steam-vessel, or to any of the crew on board.

Rules respecting cargo-books to be kept by masters of coasting vessels.

165. The Chief Customs-authority may direct that the master of any coasting vessel which is square-rigged or propelled by steam shall keep or cause to be kept, a cargo-book, stating the name of the master, the vessel, the port to which she belongs, and the port to which on each voyage she is bound.

At every port of lading such master shall enter, or cause to be entered in such book the name of such port and an account of all goods there taken on board of such vessel, with a description of the packages, and the quantities and descriptions of the goods, contained therein or stowed loose, and the names of the respective shippers and consignees, in so far as such particulars are known to him.

At every port of discharge of any such goods such master shall enter, or cause to be entered, in such book the respective days on which such goods or any of them are delivered out of such vessel.

The respective times of departure from every port of lading, and of arrival at every port of discharge, shall in like manner be duly entered.

Every such master shall, on demand, produce his cargo-book for the inspection of any officer of Customs, and such officer shall be at liberty to make any note or remark therein.

The Chief Customs-authority may, in the case of any vessel the master whereof has been directed to keep a cargo-book under this section, dispense with the manifest required under sections 158, 159 and 160.

Power to board and examine coasting vessels.

166. Any duly empowered officer of Customs may go on board of any coasting vessel in any port or place in British India, and may at any period of a voyage search any such vessel and examine all goods on board, and all goods then lading or unlading, and may demand the production of any document which ought to be on board of any such vessel.

The Customs-collector may further require that any such document belonging to any coasting vessel then in port shall be brought to him for inspection.

CHAPTER XVI.

OFFENCES AND PENALTIES.

Punishments for offences.

167. The offences mentioned in the first column of the following schedule shall be punishable to the extent mentioned in the third column of the same with reference to such offences respectively.

Offences.	Section of this Act to which offence has reference.	Penalties.
1.—Contravening any rule made under this Act	General .	Penalty not exceeding five hundred rupees.
2.—If any goods be landed or shipped, or if an attempt be made to land or ship any goods, or if any goods be brought into any bay, river, creek or arm of the sea, for the purpose of being landed or shipped, at any port or place which, at the date of such landing, shipment, attempt or bringing, is not a port for the landing and shipment of goods,	11	such goods shall be liable to confiscation.
3.—If any person ship or land goods, or aid in the shipment or landing of goods, or knowingly keep or conceal, or knowingly permit or procure to be kept or concealed, any goods shipped or landed, or intended to be shipped or landed, contrary to the provisions of this Act; or	General .	such person shall be liable to a penalty not exceeding one thousand rupees.
if any person be found to have been on board of any vessel liable to confiscation on account of the commission of an offence under [1][No. 4] of this section, while such vessel is within any bay, river, creek or arm of the sea which is not a port for the [2][shipment and landing] of goods,	11	
4.—If any vessel which has been within the limits of any port in British India with cargo on board, be afterwards found in any port, bay, river, creek or arm of the sea in British India, light or in ballast, and if the master be unable to give a due account of the customs-port where such vessel lawfully discharged her cargo,	11	such vessel shall be liable to confiscation.

[1] These words and figure were substituted for the word and figure "No. 2" and for the words "landing and shipment" respectively by the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol. IV.

[2] *See* footnote to No. 3, *supra*.

Offences.	Section of this Act to which offence has reference.	Penalties.
5.—If any goods are put, without the authority of the proper officer of Customs, on board of any tug-steamer or pilot-vessel from any seagoing vessel inward-bound ; or if any goods are put, without such authority, out of any tug-steamer or pilot-vessel for the purpose of being put on board of any such vessel outward-bound ; or if any goods on which drawback has been granted are put, without such authority, on board of any tug-steamer or pilot-vessel for the purpose of being re-landed,	11	such goods shall be liable to confiscation, and the master of every such tug-steamer or pilot-vessel shall be liable to a penalty not exceeding one thousand rupees.
6.—If any vessel arriving at, or departing from, any customs-port fails, when so required under section 17, to bring-to at any such station as has been appointed by the Chief Customs-authority for the boarding or landing of an officer of Customs,	17	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
7.—If any vessel arriving at any customs-port, after having come to its proper place of mooring or unlading, removes from such place, except with the authority of the Conservator, obtained in accordance with the provisions of the Indian Ports Act, 1875[1], or other lawful authority, to some other place of mooring or unlading, or if any vessel not brought into port by a pilot be not anchored or moored in accordance with any direction of the Chief Customs-authority under section 17,	.. 17	the master of such vessel shall be liable to a penalty not exceeding five hundred rupees, and the vessel, if not entered, shall not be allowed to enter until the penalty is paid.
8.—If any goods, the importation or exportation of which is for the time being prohibited or restricted by or under Chapter IV of this Act, be imported into or exported from British India contrary to such prohibition or restriction, or if any attempt be made so to import or export any such goods, or if any such goods be found in any package produced to any officer of Customs as containing no such goods, or if any such goods, or any dutiable goods be found either before or after landing or shipment to have been concealed in any manner on board of any vessel within the limits of any port in British India, or if any goods, the exportation of which is prohibited or restricted as aforesaid, be brought to any wharf in order to be put on board of any vessel for exportation contrary to such prohibition or restriction,	18 & 19	such goods shall be liable to confiscation ; any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees.

[1] *See* now the Indian Ports Act, 1908 (XV of 1908), General Acts, Vol. VI.

Offences.	Section of this Act to which offence has reference.	Penalties.
9.—If, upon an application to pass any goods through the Custom-house, any person not being the owner of such goods, and not having proper and sufficient authority from the owner, subscribes or attests any document relating to any goods on behalf of such owner,	General .	such person shall be liable to a penalty not exceeding one thousand rupees.
10.—If any goods, on the entry of which for re-export drawback has been paid, are not duly exported, or are unshipped or re-landed at any customs-port (not having been duly re-landed or discharged under the provisions of this Act),	42 & 43	such goods, together with any vessel used in so unshipping or re-landing them, shall be liable to confiscation; and the master of the vessel from which such goods are so unshipped or re-landed, and any person by whom or by whose orders or means such goods are so unshipped or re-landed, or who aids or is concerned in such unshipping or re-landing, shall be liable to a penalty not exceeding three times the value of such goods or not exceeding one thousand rupees.
11.—If any wine, spirit, provisions or stores be not laden on board of the vessel on board of which they should, under the provisions of section 45, 46, 47 or 48, be laden, or be unladen from such vessel without the permission of the proper officer of Customs,	44 to 48	such wine, spirit, provisions or stores shall be liable to confiscation.
12.—If any goods be entered for drawback, which are of less value than the amount of the drawback claimed,	50	such goods shall be liable to confiscation.
13.—If, in any river or port wherein a place has been fixed under section 53 by the Local Government, any vessel arriving passes beyond such place, before delivery of a manifest to the pilot, officer of Customs, or other person duly authorized to receive the same,	53	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
14.—If the master of any vessel arriving, which remains outside or below any place so fixed, wilfully omits, for the space of twenty-four hours after anchoring, to deliver a manifest as required by this Act,	53	such master shall be liable to a penalty not exceeding one thousand rupees.

Offences.	Section of this Act to which offence has reference.	Penalties.
15.—If, after any vessel arriving has entered any customs-port in which a place has not been fixed under section 53, the master of such vessel wilfully omits, for the space of twenty-four hours after anchoring, to deliver a manifest as required by this Act,	54	such master shall be liable to a penalty not exceeding one thousand rupees.
16.—If any manifest delivered under section 53, 54, 60, 63 or 66 is not signed by the person delivering the same and is not in the form or does not contain the particulars required by section 55 or 63, as the case may be, in so far as such particulars are applicable to the ship, cargo and voyage ; or if any manifest so delivered does not contain a specification true to the best of such person's knowledge of all goods imported or to be exported in such vessel,	55 & 63	the person delivering such manifest shall be liable to a penalty not exceeding one thousand rupees.
17.—If any goods entered in the import-manifest of a vessel are not found on board of the vessel ; or if the quantity so found is short, and if such deficiency is not accounted for to the satisfaction of the officer in charge of the custom-house,	55 & 64	the master of such vessel shall be liable to a penalty not exceeding twice the amount of duty chargeable on the missing or deficient goods, if they be dutiable and the duty leviable thereon can be ascertained, or otherwise to a penalty not exceeding five hundred rupees for every missing or deficient package or separate article.
18.—If any person required by this Act to receive a manifest from any master of a vessel, refuses so to do, or fails to countersign the same or to enter thereon the particulars referred to in section 56,	53, 54 & 56	such person shall be liable to a penalty not exceeding five hundred rupees.
19.—If bulk be broken in any vessel previous to the grant by the Customs-collector of an order for entry inwards or a special pass permitting bulk to be broken,	57 & 59	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
20.—If any bill of lading or copy required under section 58 is false and the master is unable to satisfy the Customs-collector that he was not aware of the fact ; or if any such bill or copy has been altered with fraudulent intent ; or if the goods mentioned in any such bill or copy have not been *bonâ fide* shipped as shown therein ; or if any such bill of lading or any bill of lading of which a copy is delivered, has not been made previously to the departure of the	58	the master of the vessel shall be liable to a penalty not exceeding one thousand rupees.

Offences.	Section of this Act to which offence has reference.	Penalties.
vessel from the place where the goods referred to in such bill of lading were shipped; or if any part of the cargo has been staved, destroyed or thrown overboard; or if any package has been opened and such part of the cargo or such package be not accounted for to the satisfaction of the Customs-collector,		
21.—If any master of a vessel attempts to depart without a port-clearance,	62	such master shall be liable to a penalty not exceeding five hundred rupees.
22.—If any vessel actually departs without a port-clearance,	62	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
23.—If any pilot takes charge of any vessel proceeding to sea, notwithstanding that the master of such vessel does not produce a port-clearance,	62	such pilot, on conviction before a Magistrate, shall be liable to fine not exceeding one thousand rupees.
24.—If any master of a vessel refuses to receive on board an officer of Customs deputed under section 67,	68	such master shall be liable to a penalty not exceeding five hundred rupees for each day during which such officer is not received on board; and the vessel, if not entered, shall not be allowed to enter until such penalty is paid.
25.—If any master of a vessel refuses to receive on board one servant of such officer, or to provide such officer and servant with suitable shelter and accommodation, and with a due allowance of fresh water, and with the means of cooking on board,	68	such master shall, in each such case, be liable to a penalty not exceeding five hundred rupees.
26.—If any master of a vessel refuses to allow such vessel, or any box, place or closed receptacle in such vessel, to be searched when so required by an officer of Customs bearing a written order to search; or if an officer of Customs places any lock, mark or seal upon any goods in a vessel, and such lock, mark or seal is wilfully opened, altered or broken, before due delivery of such goods; or if any such goods are secretly conveyed away; or if any hatchway or entrance to the hold of a vessel, after having been fastened down by an officer of Customs, is opened without his permission,	69	the master of such vessel shall be liable, upon conviction before a Magistrate, to a fine not exceeding one thousand rupees.

Offences.	Section of this Act to which offence has reference.	Penalties.
27.—If the master of any vessel laid up by the withdrawal of the officer of Customs shall, before application is made by him for an officer of Customs to superintend the receipt of cargo, cause or suffer to be put on board of such vessel any goods whatever, in contravention of section 70,	70	such master shall be liable to a penalty not exceeding one thousand rupees, and the goods, if protected by a pass, shall be liable to be re-landed for examination at the expense of the vessel, and, if not protected by a pass, shall be liable to confiscation.
28.—If any master of a vessel, in any case other than that provided for by No. 27, causes or suffers any goods to be discharged, shipped or water-borne contrary to any of the provisions of section 70, 72 or 75,	70, 72 & 75	such master shall be liable to a penalty not exceeding one thousand rupees; and all goods so discharged, shipped or water-borne shall be liable to confiscation.
29.—If, when a boat-note is required by section 76, any goods water-borne for the purpose of being landed from any vessel, and warehoused or passed for importation, or of being shipped for exportation, be found without such note; or	76	such goods shall be liable to confiscation; and the person by whose authority the goods are being landed or shipped, and the person in charge of the boat, shall each be liable to a penalty not exceeding twice the amount of duty (if any) leviable on the said goods.
if any goods are found on board any boat in excess of such boat-note, whether such goods are intended to be landed from, or to be shipped on board of, any vessel,		
30.—If any person refuses to receive, or fails to sign, or to note the prescribed particulars upon, any boat-note, as required by section 76, or if any master or officer of a vessel receiving the same fails to deliver it when required so to do by any officer of Customs authorized to make such requisition,	76	such person, master or officer shall be liable to a penalty not exceeding five hundred rupees.
31.—If any goods are, without permission, shipped or water-borne to be shipped, or are landed, except from or at a wharf or other place duly appointed for the purpose; or	73	such goods shall be liable to confiscation; and the person by whose authority the goods are shipped, landed, water-borne or transhipped, and the person in charge of the vessel employed in conveying them, shall each be liable to a penalty not exceeding twice the amount of duty (if any) leviable on such goods.
if any goods water-borne for the purpose of being landed or shipped are not landed or shipped without unnecessary delay; or	77	
if the boat containing such goods be found out of the proper track between the vessel and the wharf or other proper place of landing or shipping, and such deviation be not accounted for to the satisfaction of the Customs-collector; or		
if any goods are transhipped contrary to the provisions of section 78,	78	

(*Chapter XVI.—Offences and Penalties.*)

Offences.	Section of this Act to which offence has reference.	Penalties.
32.—If, after the issue of a notification under section 79 with regard to any port, any goods are found within the limits of such port on board of any boat not duly licensed and registered,	79	such goods, unless they are covered by a special permit from the Customs-collector, shall be liable to confiscation, and the owner or the person in charge of the boat shall be liable to a penalty not exceeding one hundred rupees.
33.—If any master of a vessel discharges or suffers to be discharged any goods not duly entered in the manifest of such vessel,	55 & 82	such master shall be liable to a penalty not exceeding one thousand rupees.
34.—If any goods are found concealed in any place, box or closed receptacle in any vessel, and are not duly accounted for to the satisfaction of the officer in charge of the custom-house,	General .	such goods shall be liable to confiscation.
35.—If any goods are found on board in excess of those entered in the manifest, or not corresponding with the specification therein contained,	55 & 82	such goods shall be liable to confiscation, or to be charged with such increased rates of duty as the Chief Officer of Customs directs.
36.—If, after any goods have been landed and before they have been passed through the custom-house, the owner removes or attempts to remove them, with the intention of defrauding the revenue,	86 & 87	such goods shall be liable to confiscation ; or if the goods cannot be recovered the owner shall be liable, in addition to full duty, to a penalty not exceeding twice the amount of such duty, if the goods be dutiable and the duty leviable thereon can be ascertained ; or otherwise to a penalty not exceeding one thousand rupees for every missing or deficient package or separate article.
37.—If it be found, when any goods are entered at, or brought to be passed through, a custom-house, either for importation or exportation, that— (*a*) the packages in which they are contained differ widely from the description given in the bill of entry or application for passing them ; or (*b*) the contents thereof have been wrongly described in such bill or application as regards the denominations, characters or conditions according to which such goods are chargeable with duty, or are being imported or exported ; or	86 & 137	such packages, together with the whole of the goods contained therein, shall be liable to confiscation, and every person concerned in any such offence shall be liable to a penalty not exceeding one thousand rupees.

Offences.	Section of this Act to which offence has reference.	Penalties.
(*c*) the contents of such packages have been mis-stated in regard to sort, quality, quantity or value ; or (*d*) goods not stated in the bill of entry or application have been concealed in, or mixed with, the articles specified therein, or have apparently been packed so as to deceive the officers of Customs, and such circumstance is not accounted for to the satisfaction of the customs-collector,		
38.—If, when goods are passed by tale or by package, any omission or misdescription thereof tending to injure the revenue be discovered,	86 & 94	the person guilty of such omission or misdescription shall be liable to a penalty not exceeding ten times the amount of duty which might have been lost to Government by such omission or misdescription, unless it be proved to the satisfaction of the officer in charge of the custom-house that the variance was accidental.
39.—If, without entry duly made, any goods are taken or passed out of any custom-house or wharf,	86	the person so taking or passing such goods shall, in every such case, be liable to a penalty not exceeding five hundred rupees, and such goods shall be liable to confiscation.
40.—If any prohibited or dutiable goods are found, either before or after landing, concealed in any passenger's baggage,	General .	such passenger shall be liable to a penalty not exceeding five hundred rupees, and such goods shall be liable to confiscation.
41.—If any goods entered to be warehoused are carried into the warehouse, unless with the authority, or under the care, of the proper officers of Customs, and in such manner, by such persons, within such time, and by such roads or ways, as such officers direct,	93	such goods shall be liable to confiscation, and any person so carrying them shall be liable to a penalty not exceeding one thousand rupees.
42.—If any goods entered to be warehoused are not duly warehoused in pursuance of such entry, or are withheld, or removed from any proper place of examination before they have been examined and certified by the proper officer,	94	such goods shall be deemed not to have been duly warehoused, and shall be liable to confiscation.
43.—If any warehoused goods be not warehoused in accordance with sections 94 and 95,	94 & 95	such goods shall be liable to confiscation.

(*Chapter XVI.—Offences and Penalties.*)

Offences.	Section of this Act to which offence has reference.	Penalties.
44.—If the licensee of any private warehouse licensed under this Act does not open the same when required so to do by any officer entitled to have access thereto, or, upon demand made by any such officer, refuses access to any such officer,	97	such licensee shall be liable to a penalty not exceeding one thousand rupees, and shall further be liable to have his license forthwith cancelled.
45.—If the keeper of any public warehouse, or the licensee of any private warehouse, neglects to stow the goods warehoused therein, so that easy access may be had to every package and parcel thereof,	Chap. XI	such keeper or licensee shall, for every such neglect, be liable to a penalty not exceeding fifty rupees.
46.—If the owner of any warehoused goods, or any person in the employ of such owner, clandestinely opens any warehouse, or, except in presence of the proper officer of Customs, gains access to his goods,	99	such owner or person shall, in every such case, be liable to a penalty not exceeding one thousand rupees.
47.—If any warehoused goods are opened in contravention of the provisions of section 98 ; or if any alteration be made in such goods or in the packing thereof, except as provided in section 100,	98 & 100	such goods shall be liable to confiscation.
48.—If any goods lodged in a private warehouse are found at the time of delivery therefrom to be deficient, and such deficiency is not due solely to ullage or wastage, as allowed under sections 116 and 117,	123	the licensee of such warehouse shall, unless the deficiency be accounted for to the satisfaction of the Customs-collector, be liable to a penalty equal to five times the duty chargeable on the goods so deficient.
49.—If the keeper of any public warehouse, or the licensee of any private warehouse, fails, on the requisition of any officer of Customs, to produce any goods which have been deposited in such warehouse, and which have not been duly cleared and delivered therefrom, and is unable to account for such failure to the satisfaction of the Customs-collector,	123	such keeper or licensee shall, for every such failure, be liable to pay the duties due on such goods, and also a penalty not exceeding fifty rupees in respect of every package or parcel so missing or deficient.
50.—If any goods, after being duly warehoused, are fraudulently concealed in, or removed from, the warehouse, or abstracted from any package, or transferred from one package to another, or otherwise, for the purpose of illegal removal or concealment,	Chap. XI	such goods shall be liable to confiscation, and any person concerned in any such offence shall be liable to a penalty not exceeding one thousand rupees.

(Chapter XVI.—Offences and Penalties.)

Offences.	Section of this Act to which offence has reference.	Penalties.
51.—If any goods lodged in a private warehouse are found to exceed the registered quantity,	Chap. XI	such excess, unless accounted for to the satisfaction of the officer in charge of the custom-house, shall be charged with five times the ordinary duty thereon.
52.—If any goods be removed from the warehouse in which they were originally deposited, except in the presence, or with the sanction, of the proper officer, or under the proper authority for their delivery,	Ditto	such goods shall be liable to confiscation, and any person so removing them shall be liable to a penalty not exceeding one thousand rupees.
53.—If any person illegally takes any goods out of any warehouse without payment of duty, or aids, assists or is concerned therein,	Ditto	such person shall be liable to a penalty not exceeding one thousand rupees.
54.—If any person contravenes any rule regarding the process of transhipment made by the Local Government, or any prohibition or order relating to transhipment notified by the Governor General in Council, or tranships goods not allowed to be transhipped,	130 134	such person shall be liable to a penalty not exceeding one thousand rupees; and any goods in respect of which such offence has been committed shall be liable to confiscation.
55.—If any goods be taken on board of any vessel at any customs-port in contravention of section 136,	136	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
56.—If any goods not specified in a duly passed shipping bill are taken on board of any vessel, contrary to the provisions of section 137,	137	the master of such vessel shall be liable to a penalty not exceeding fifty rupees for every package of such goods.
57.—If any goods specified in the manifest of any vessel, or in any shipping bill, are not duly shipped before the departure of such vessel, or are relanded; and notice of such short-shipment or relanding be not given as required by section 140,	140	the owner of such goods shall be liable to a penalty not exceeding one hundred rupees; and such goods shall be liable to confiscation.
58.—If any goods duly shipped on board of any vessel be landed, except under section 141, 142 or 143, at any place other than that for which they have been cleared,	141	the master of such vessel shall, unless the landing be accounted for to the satisfaction of the Customs-collector, be liable to a penalty not exceeding three times the value of such goods so landed.

(Chapter XVI.—Offences and Penalties.)

Offences.	Section of this Act to which offence has reference.	Penalties.
59.—If any goods on account of which drawback has been paid be not found on board of any vessel referred to in section 142,	[1][142]	the master of such vessel shall be liable to a penalty not exceeding the entire value of such goods, unless the fact be accounted for to the satisfaction of the Customs-collector.
60.—If any person, without a special pass from an officer of Excise at the place of exportation, relands or attempts to reland any spirit shipped for exportation,	154	such person shall be liable to a penalty not exceeding five hundred rupees.
61.—If any person wilfully contravenes any rule relating to spirits made under section 155,	155	such person shall be liable to a penalty not exceeding five hundred rupees; and all such spirit shall be liable to confiscation.
62.—If, in contravention of any rules made under section 157, any goods are taken into, or put out of, or carried in, any coasting vessel; or if any such rules be otherwise infringed,	157	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
63.—If, contrary to any such rules, any coasting vessel touches at any foreign port, or deviates from her voyage, unless forced by unavoidable circumstances; or if the master of any such vessel which has touched at a foreign port fails to declare the same in writing to the customs-collector at the customs-port at which such vessel afterwards first arrives,	159	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees; and if any goods liable to export-duty have been landed from, or any goods liable to import-duty have been shipped in, such vessel at such foreign port, such master shall further be liable to a penalty not exceeding three times the duty which would have been leviable on such goods if they had been exported from, or imported at, a customs-port to or from a foreign port, as the case may be.
64.—If in the case of any coasting-vessel any of the provisions of section 158, 159 or 160 are not complied with,	158, 159 & 160	the master of such vessel shall in each such case be liable to a penalty not exceeding five hundred rupees.

[1] These figures were substituted for the figures "141" by the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol. IV.

Offences.	Section of this Act to which offence has reference.	Penalties.
65.—If the person executing any bond given under section 161 fail to produce the certificate mentioned in the same section, or to show sufficient reason for its non-production,	161	such person shall be bound to pay a penalty equal to double the amount of customs-duties which would have been chargeable on the export-cargo of the vessel had she been declared to be bound to a foreign port.
66.—If the master of any coasting-vessel violates any of the conditions under which a general pass for such vessel has been granted,	164	such master shall be liable to a penalty not exceeding one thousand rupees.
67.—If any master of a coasting-vessel contravenes any of the provisions of section 165,	165	such master shall be liable to a penalty not exceeding five hundred rupees.
68.—If, upon examination, any package entered in the cargo-book required by section 165, as containing dutiable goods, is found not to contain such goods ; or if any package is found to contain dutiable goods not entered, or not entered as such, in such book,	615	such package, with its contents, shall be liable to confiscation.
69.—If the master of any coasting-vessel required under section 165 to keep a cargo-book fails correctly to keep, or to cause to be kept, such book, or to produce the same on demand ; or if at any time there be found on board of any such vessel any goods not entered in such book as laden, or any goods noted as delivered ; or if any goods entered as laden, and not noted as delivered, be not on board,	165	such master shall be liable to a penalty not exceeding five hundred rupees.
70.—If, contrary to the provisions of this or any other law for the time being in force relating to the Customs, any goods are laden on board of any vessel in any customs-port and carried coastwise ; or if any goods which have been brought coastwise are so unladen in any such port ; or if any goods are found on board of any coasting-vessel without being entered in the manifest or cargo-book or both (as the case may be) of such vessel,	Chap. XV	such goods shall be liable to confiscation, and the master of such vessel shall be liable to a penalty not exceeding five hundred rupees.
71.—If the master of any coasting-vessel refuses to bring any document to the Customs-collector when so required under section 166,	166	such master shall be liable to a penalty not exceeding two hundred rupees.

Offences.	Section of this Act to which offence has reference.	Penalties.
72.—If any person makes or signs, or uses, any declaration or document used in the transaction of any business relating to the Customs, knowing such declaration or document to be false in any particular; or counterfeits, falsifies or fraudulently alters or destroys any such document, or any seal, signature, initials or other mark made or impressed by any officer of Customs in the transaction of any business relating to the Customs; or, being required under this Act to produce any document, refuses or neglects to produce such document; or, being required under this Act to answer any question put to him by an officer of Customs, does not truly answer such question,	General	such person shall, on conviction of any such offence before a Magistrate, be liable to a fine not exceeding one thousand rupees.
73.—If any person on board of any vessel or boat in any customs-port, or who has landed from any such vessel or boat, upon being asked by any such officer whether he has dutiable or prohibited goods about his person or in his possession, declares that he has not, and if any such goods are, after such denial, found about his person or in his possession,	Ditto	such goods shall be liable to confiscation, and such person shall be liable to a penalty not exceeding three times the value of such goods.
74.—If any officer of Customs require any person to be searched for dutiable or prohibited goods, or to be detained, without having reasonable ground to believe that he has such goods about his person, or has been guilty of an offence relating to the Customs,	169	such officer shall, on conviction before a Magistrate, be liable to a fine not exceeding five hundred rupees.
75.—If any officer of Customs or other person duly employed for the prevention of smuggling, is guilty of a wilful breach of the provisions of this Act,	General	such officer or person shall, on conviction before a Magistrate, be liable to simple imprisonment for any term not exceeding two years, or to fine, or to both.
76.—If any officer of Customs, or other person duly employed for the prevention of smuggling, practises, or attempts to practise, any fraud for the purpose of injuring the customs-revenue, or abets or connives at any such fraud, or any attempt to practise any such fraud,	Ditto	Ditto ditto.
77.—If any Police-officer, whose duty it is, under section 180, to send a written notice or cause goods to be conveyed to a custom-house, neglects so to do,	180	such officer shall, on conviction before a Magistrate, be liable to a penalty not exceeding one hundred rupees.

(*Chapter XVI.—Offences and Penalties. Chapter XVII.—Procedure relating to Offences, Appeals, etc.*)

Offences.	Section of this Act to which offence has reference.	Penalties.
78.—If any person intentionally obstructs any officer of Customs or other person duly employed for the prevention of smuggling, in the exercise of any powers given under this Act to such officer or person,	General	such person shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding six months, or to a fine not exceeding one thousand rupees, or to both.
79.—If any officer of Customs, except in the discharge in good faith of his duty as such officer, discloses any particulars learned by him in his official capacity in respect of any goods or shows any samples delivered to him in such capacity, or if any officer of Customs, except as permitted by this Act, parts with the possession of any samples delivered to him in his official capacity,	195	he shall be liable to a penalty not exceeding one thousand rupees.
80.—If any person, without the approval of the Customs-collector under section 202, acts as an agent for the transaction of business as therein mentioned,	202	such person shall be liable to a penalty not exceeding five hundred rupees.

Nothing in the second column of the above schedule shall be deemed to have the force of law.

Packages and contents included in confiscation of goods.

168. The confiscation of any goods under this Act includes any package in which they are found, and all the other contents thereof.

Also conveyances and animals used in removal.

Every vessel, cart or other means of conveyance, and every horse or other animal, used in the removal of any goods liable to confiscation under this Act shall in like manner be liable to confiscation.

Tackle, etc., included in confiscation of vessels.

The confiscation of any vessel under this Act includes her tackle, apparel and furniture.

CHAPTER XVII.[1]

PROCEDURE RELATING TO OFFENCES, APPEALS, ETC.

Power to

169. Any officer of Customs duly employed in the prevention of smuggling

[1]The powers conferred on officers of Customs under this Chapter may be exercised by them for the prevention of offences under the Indian Emigration Act, 1908 (XVII of 1908) *see* s. 99 of the Act, General Acts, Vol. VI.

may search any person on board of any vessel in any port in British India, or any person who has landed from any vessel : search on reasonable suspicion.

Provided that such officer has reason to believe that such person has dutiable or prohibited goods secreted about his person.

170. When any officer of Customs is about to search any person under the provisions of section 169, such person may require the said officer to take him, previous to search, before the nearest Magistrate or Customs-collector. Persons may, before search, require to be taken before Magistrate or Customs-collector.

If such requisition be made, the officer of Customs may detain the person making it until he can bring him before the nearest Magistrate or Customs-collector.

The Magistrate or Customs-collector before whom any person is so brought shall, if he see no reasonable ground for search, forthwith discharge such person ; but, if otherwise, shall direct that the search be made.

A female shall not be searched by any but a female.

171. Any duly empowered officer of Customs or other person duly employed for the prevention of smuggling, may stop and search for smuggled goods any vessel, cart or other means of conveyance : Provided that he has reason to believe that smuggled goods are contained therein. Power to stop vessels, carts, etc., and search for goods on reasonable suspicion.

172. Any Magistrate may, on application by a Customs-collector, stating his belief that dutiable or prohibited goods are secreted in any place within the local limits of the jurisdiction of such Magistrate, issue a warrant to search for such goods. Power to issue search-warrants.

Such warrant shall be executed in the same way, and shall have the same effect, as a search-warrant issued under the law relating to Criminal Procedure.[1]

173. Any person against whom a reasonable suspicion exists that he has been guilty of an offence under this Act may be arrested in any place, either upon land or water, by any officer of Customs or other person duly employed for the prevention of smuggling. Persons reasonably suspected may be arrested.

174. Every person arrested on the ground that he has been guilty of an offence under this Act shall forthwith be taken before the nearest Magistrate or Customs-collector. Persons arrested to be taken to nearest Magistrate or Customs-collector.

175. When any such person is taken before a Magistrate, such Magistrate may, if he thinks fit, either commit him to gaol or order him to be kept in the custody of the Police for such time as is necessary to enable such Magistrate to communicate with the proper officers of Customs : Persons taken before Magistrate may be detained or admitted to bail.

Provided that any person so arrested, committed or kept shall be released on giving security to the satisfaction of the Magistrate to appear at such time and place as such Magistrate appoints in this behalf.

[1] *See* now Act V of 1898, General Acts, Vol. V.

Person escaping may be afterwards arrested.

176. If any person liable to be arrested under this Act is not arrested at the time of committing the offence for which he is so liable, or after arrest make his escape, he may at any time afterwards be arrested and taken before a Magistrate, to be dealt with as if he had been arrested at the time of committing such offence.

Persons in Her Majesty's Navy, when arrested, to be secured on board until warrant procured.

177. When any person employed on the crew of any of the ships of Her Majesty's Navy, Indian Marine or Marine Survey, is arrested under this Act, the arresting officer shall forthwith give notice thereof to the commanding officer of the ship, who shall thereupon place such person in security on board of such ship, until the arresting officer has obtained a warrant from a Magistrate for bringing up such person to be dealt with according to law.

The Magistrate shall grant such warrant upon complaint made to him by the arresting officer, stating the offence for which the person is detained.

Seizure of things liable to confiscation.

178. Any things liable to confiscation under this Act may be seized in any place, either upon land or water, by any officer of Customs or other person duly employed for the prevention of smuggling.

Things seized how dealt with.

179. All things seized on the ground that they are liable to confiscation under this Act shall, as soon as conveniently may be, be delivered into the care of any Customs-officer authorized to receive the same.

If there be no such officer at hand, all such things shall be carried to and deposited at the custom-house nearest to the place of seizure.

If there be no custom-house within a convenient distance, such things shall be deposited at the nearest place appointed by the Chief Customs-authority for the deposit of things so seized.

Procedure in respect of things seized on suspicion.

180. When any things liable to confiscation under this Act are seized by any Police-officer on suspicion that they have been stolen, he may carry them to any police-station or Court at which a complaint connected with the stealing or receiving of such things has been made, or an enquiry connected with such stealing or receiving is in progress, and there detain such things until the dismissal of such complaint or the conclusion of such enquiry or of any trial thence resulting.

In every such case the Police-officer seizing the things shall send written notice of their seizure and detention to the nearest custom-house ; and immediately after the dismissal of the complaint or the conclusion of the enquiry or trial, he shall cause such things to be conveyed to, and deposited at, the nearest custom-house, to be there proceeded against according to law.

When seizure or arrest is made, reason in writing to be given.

181. When anything is seized, or any person is arrested under this Act, the officer or other person making such seizure or arrest shall, on demand of the person in charge of the thing so seized, or of the person so arrested, give him a statement in writing of the reason for such seizure or arrest.

Adjudication

[1]**182.** In every case, except the cases mentioned in section 167, Nos. 26,

[1] For notification issued under this section, *see* Bombay Government Gazette, 1903, Pt. I, p. 132] ; Burma Gazette 1908, Pt. I, p. 701.

72 and 74 to 76, both inclusive, in which, under this Act, anything is liable to confiscation or to increased rates of duty, or any person is liable to penalty, such confiscation, increased rate of duty or penalty may be adjudged— of confiscations and penalties.

(*a*) without limit, by a Deputy Commissioner or Deputy Collector of Customs, or a Customs-collector;

(*b*) up to confiscation of goods not exceeding two hundred and fifty rupees in value, and imposition of penalty or increased duty not exceeding one hundred rupees, by an Assistant Commissioner or Assistant Collector of customs;

(*c*) up to confiscation of goods not exceeding fifty rupees in value, and imposition of penalty or increased duty not exceeding ten rupees, by such other subordinate officers of Customs as the Local Government may, from time to time, empower in that behalf in virtue of their office:

Provided that the Local Government may, in the case of any officer performing the duties of a Customs-collector, limit his powers to those indicated in clause (*b*) or in clause (*c*) of this section, and may confer on any officer, by name or in virtue of his office, the powers indicated in clauses (*a*), (*b*) or (*c*) of this section.

183. Whenever confiscation is authorized by this Act, the officer adjudging it shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit. Option to pay fine in lieu of confiscation.

184. When anything is confiscated under section 182, such thing shall thereupon vest in Her Majesty. On confiscation, property to vest in Her Majesty.

The officer adjudging confiscation shall take and hold possession of the thing confiscated, and every officer of Police, on the requisition of such officer, shall assist him in taking and holding such possession.

185. If any vessel actually departs without a port-clearance, or after failing to bring-to when required at any station appointed under section 17, the penalty to which the master of such vessel is liable may be adjudged by the Chief Customs-officer of any customs-port to which such vessel proceeds, or in which she is, and, in the case of Aden, by such officer as the Governor of Bombay in Council appoints in this behalf. Levy of penalty for failure to bring-to.

A certificate of such departure or failure to bring-to when required, purporting to be signed by the Chief Customs-officer of the port from which the vessel is stated to have so departed, shall be *primâ facie* proof of the fact so certified.

186. The award of any confiscation, penalty or increased rate of duty under this Act by an officer of Customs shall not prevent the infliction of any punishment to which the person affected thereby is liable under any other law. Penalty under Act not to interfere with punishment under other law.

Offences not specially provided for how tried.

187. All offences against this Act, other than those cognizable under section 182 by officers of Customs, may be tried summarily by a Magistrate.

Appeal from subordinate to Chief Customs-authority.

188. Any person deeming himself aggrieved by any decision or order passed by an officer of Customs under this Act may, within three months from the date of such decision or order, appeal therefrom to the Chief Customs-authority, or, in such cases as the Local Government directs, to any officer of Customs not inferior in rank to a Customs-collector and empowered in that behalf by name or in virtue of his office by the Local Government.[1]

Such authority or officer may thereupon make such further enquiry and pass such order as he thinks fit, confirming, altering or annulling the decision or order appealed against:

Provided that no such order in appeal shall have the effect of subjecting any person to any greater confiscation, penalty or rate of duty than has been adjudged against him in the original decision or order.

Every order passed in appeal under this section shall, subject to the power of revision conferred by section 191, be final.

Deposit, pending appeal, of duty demanded.

189. Where the decision or order appealed against relates to any duty or penalty leviable in respect of any goods, the owner of such goods, if desirous of appealing against such decision or order, shall, pending the appeal, deposit in the hands of the Customs-collector at the port where the dispute arises the amount demanded by the officer passing such decision or order.

When delivery of such goods of the owner thereof is withheld merely by reason of such amount not being paid, the Customs-collector shall, upon such deposit being made, cause such goods to be delivered to such owner.

If upon any such appeal it is decided that the whole or any portion of such amount was not leviable in respect of such goods, the Customs-collector shall return such amount or portion (as the case may be) to the owner of such goods on demand by such owner.

Power to remit penalty or confiscation.

190. If, upon consideration of the circumstances under which any penalty, increased rate of duty or confiscation has been adjudged under this Act by an officer of Customs, the Chief Customs-authority is of opinion that such penalty, increased rate or confiscation ought to be remitted in whole or in part, or commuted, such authority may remit the same or any portion thereof, or may, with the consent of the owner of any goods ordered to be confiscated, commute the order of confiscation to a penalty not exceeding the value of such goods.

Revision by Local Government.

191. The Local Government may, on the application of any person aggrieved by any decision or order passed under this Act by any officer of Cus-

[1] For officers appointed under s. 188, by the Government of Bombay, *see* Bombay Government Gazette, 1882, Pt. I, p. 717; *ibid*, 1887, Pt. I, p. 337; *ibid*, 1897, Pt. I, p. 828; and *ibid*, 1907, Pt. I, p. 292.

toms or Chief Customs-authority, and from which no appeal lies, reverse or modify such decision or order.

Goods on which penalty incurred not to be removed till payment.

192. When any fine, penalty or increased rate of duty is leviable under this Act, the goods in respect of which such fine, penalty or rate is leviable shall not be removed by the owner until such fine, penalty or rate is paid.

Other goods of person liable to fine or penalty may be detained.

If any person has become liable to any such fine, penalty or rate in respect of any goods, the Customs-collector may detain any other goods belonging to such person passing through the custom-house until such fine, penalty or rate is paid.

Enforcement of payment of penalty.

193. When a penalty or increased rate of duty is adjudged against any person under this Act by any officer of Customs, such officer, if such penalty or increased rate be not paid, may levy the same by sale of any goods of the said person which may be in his charge or in the charge of any other officer of Customs.

When an officer of Customs who has adjudged a penalty or increased rate of duty against any person under this Act is unable to realize the unpaid amount thereof from such goods, such officer may notify in writing to any Magistrate within the local limits of whose jurisdiction such person or any goods belonging to him may be, the name and residence of the said person and the amount of penalty or increased rate of duty unrecovered ; and such Magistrate shall thereupon proceed to enforce payment of the said amount in like manner as if such penalty or increased rate had been a fine inflicted by himself.

CHAPTER XVIII.

MISCELLANEOUS.

Power to open packages and examine goods.

194. Any officer of Customs may open any package, and examine any goods brought by sea to, or shipped or brought for shipment at, any customs-port.

Power to take samples of goods.

195. The Customs-collector may, on the entry or clearance of any goods, or at any time while such goods are being passed through the custom-house, take sample of such goods, for examination or for ascertaining the value thereof on which duties are payable, or for any other necessary purpose.

Every such sample shall, if practicable, be at the option of the owner either restored to him, or sold and the proceeds accounted for to him.

Owner to pay expense incidental to compliance with Customs-law.

196. The unshipping, carrying, shipping and landing of all goods,

and the bringing of them to the proper place for examination or weighing, and the putting of them into and out of the scales, and the opening, unpacking, bulking, sorting, lotting, marking and numbering of goods, where such operations are necessary or permitted,

and the removing of goods to, and the placing of them in, the proper place of deposit,

shall be performed by or at the expense of the owner of such goods.

No compensation for loss or injury except on proof of neglect or wilful act.

197. No owner of goods shall be entitled to claim from any officer of Customs compensation for any loss or damage occurring to such goods at any time while they remain or are lawfully detained in any custom-house, or on any custom-house wharf, or under charge of any officer of Customs, unless it be proved that such loss or damage was occasioned by the neglect or wilful act of such officer of Customs.

Notice of proceedings.

198. No proceeding other than a suit shall be commenced against any person for anything purporting to be done in pursuance of this Act without giving to such person a month's previous notice in writing of the intended proceeding and of the cause thereof; or

Limitation.

after the expiration of three months from the accrual of such cause.

Wharfage-fees.

199. The Chief Customs-authority may from time to time fix the period after the expiration of which goods left on any custom-house wharf, or other authorized landing-place or part of the custom-house premises, shall be subject to payment of fees and the amount of such fees.[1]

Duplicates of documents may be granted on payment of fee.

200. A duplicate of any certificate, manifest, bill or other custom-house document may, on payment of a fee not exceeding ten rupees, be furnished, at the discretion of the Customs-collector to any person applying for the same, if the Customs-collector is satisfied that no fraud has been committed or is intended by the applicant.

Amendment of documents.

201. Except in the cases provided for by sections 36, 55, 63 and 94, the Customs-collector may in his discretion, upon payment of one rupee, authorize any document after it has been entered and recorded in the custom-house to be amended.

Custom-house agents.

202. No person authorized to act as an agent for the transaction of any business relating to the entrance or clearance of any vessel or the import or export of goods or baggage shall so act in any custom-house unless such authorization is approved by the Customs-collector.

Such officer may require any person so authorized to give a bond with sufficient security in any sum not exceeding five thousand rupees for his faithful behaviour as regards the custom-house regulations and officers.

Such officer may in case of misbehaviour of the person so authorized suspend or withdraw such approval, but an appeal against every such suspension or withdrawal shall lie to the Chief Customs-authority, whose decision thereon shall be final.

Every appeal under this section shall be made within one month of the suspension or withdrawal.

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[1] For orders fixing such fees in—
(1) Bombay, *see* Bom. R. and O.
(2) Madras, *see* Mad. R. and O.

Agent to produce authority if required.

203. When any person applies to any officer of Customs for permission to transact any specified business with him on behalf of any other person, such officer may require the applicant to produce a written authority from the person on whose behalf such business is to be transacted, and in default of the production of such authority may refuse such permission.

The clerk, servant or agent of any person or mercantile firm may transact business generally at the custom-house on behalf of such person or firm: Provided that the Customs-collector may refuse to recognize such clerk, servant or agent unless such person or a member of such firm identifies such clerk, servant or agent to the Customs-collector as empowered to transact such business, and deposits with the Customs-collector an authority in writing duly signed, authorizing such clerk, servant or agent to transact such business on behalf of such person or firm.

Rules to be notified.

204. All rules made under this Act shall be notified in the official Gazette and shall thereupon have the force of law.

[1]All such rules for the time being in force shall be collected, arranged and published at intervals not exceeding two years, and shall be sold to the public at a reasonable price.

Cancellation of notifications.

205. Any notification made by any authority under powers conferred by this Act may be cancelled[2] in like manner by the same authority.

Remission of duty and compensation to owner in certain cases.

206. If in any case relating to the removal of goods from a warehouse without payment of duty, the person offending be an officer of Customs not acting in execution of his duty, and be prosecuted to conviction by the owner of such goods, no duty shall be payable in respect of such goods. For any damage so occasioned by such officer, the Customs-collector shall, with the sanction of the Chief Customs-authority, make due compensation to such owner.

Saving of Calcutta Port.

207. Nothing in this Act shall affect any law[3] for the time being in force relating to the Commissioners for making improvements in the Port of

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[1] For compilations published as directed by this section by—
(1) Bengal, *see* rules under the Act, corrected up to 31st December 1902, published under the authority of the Board of Revenue; Calcutta Gazette, 1903, Pt. I, p. 353; and *ibid*, 1907, Pt. I, p. 455;
(2) Bombay, *see* rules under the Act, and standing order by the Commissioner of Customs brought down to 15th June 1899;
(3) Burma, *see* Burma Sea Customs Manual, corrected up to 1st July 1903;
(4) Karachi, *see* rules and orders under the Act issued by the Commissioner in Sindh, corrected up to 31st December 1899;
(5) Madras, *see* rules under the Act, corrected up to April 1902.

[2] For notification under this section in (1) Bengal, *see* Ben. R. and O.; (2) Madras, *see* Mad. R. and O.; Fort St. George Gazette, 1906, Pt. I, p. 1233; and Gazette of India, 1908, Pt. I, p. 328.

[3] *See* the Madras Port Trust Act, 1905 (Mad. II of 1905);
the Bombay Port Trust Act, 1879 (Bom. VI of 1879);
the Karachi Port Trust Act, 1886 (Bom. VI of 1886); and the Aden Port Trust Act, 1888 (Bom. V of 1888), Bom. Code.
the Chittagong Port Commissioners Act, 1887 (Ben. Act IV of 1887), Ben. Code, E. B. and A. Code.
the Calcutta Port Act, 1890 (Bom. III of 1890), Ben. Code; and the Rangoon Port Act, 1905 (Bur. IV of 1905), Bur. Code.

Commissioners' and Bombay Port Trust Acts.

Calcutta or the Trustees of the Port of Bombay [1][or any like body hereafter created for any other port].

SCHEDULE.

PART I.

Acts of the Governor General of India in Council.

Number and year.	Title.	Extent of repeal.
XXI of 1856 . .	An Act to consolidate and amend the law relating to the Abkari Revenue in the Presidency of Fort William in Bengal.	Section 8. Sections 10 to 15, both inclusive, the last sentence of section 16 and the form of bond annexed to the Act.
VI of 1863 . . .	An Act to consolidate and amend the laws relating to the administration of the Department of Sea Customs in India.	The whole.
X of 1868 . . .	An Act to amend the Consolidated Customs Act.	The whole.
XVII of 1869 . .	An Act to shorten the time for landing cargo.	The whole.
XIV of 1871 . .	An Act for the further amendment of the Consolidated Customs Act.	The whole.
VI of 1873 . . .	An Act to amend the law relating to the transhipment of goods imported by steamer, and for other purposes.	The whole.
XVI of 1875 . .	An Act to amend the law relating to Customs-duties, and for other purposes.	Sections 5, 6, 7 and 12.

[1] These words were substituted for the word "respectively" by the Excise and Sea Customs Law Amendment Act, 1885 (IX of 1885), s. 6, General Acts, Vol. III.

PART II.

FORMS.

A

FORM OF BOND FOR IMPORT-DUTY.

(*See section 92.*)

BOND.

No. 18 .

We, *A. B.*,
now of
, and *C. D.*,
of the same place, are jointly and severally bound to Her Majesty's Secretary of State for India in Council in the sum of Government rupees , to be paid to the said Secretary of State in Council, for which payment we jointly and severally bind ourselves and our legal representatives

(*date*)

(*Signed*) ( )

The above bounden having applied to the officer in charge of the Custom-house at for and obtained permission to lodge in the warehouse for a period of . the following goods, that is to say—
imported by sea from on board of the ship and entered in the Custom-house Books as No. of the Register of Goods imported by Sea ;

The condition of this Bond is that if the , or their legal representatives, shall observe all the rules prescribed in the Sea Customs Act, 1878, to be observed by owners of goods warehoused, and by persons obtaining permission to warehouse goods under the provisions thereof ;

And if the said , or their legal representatives, shall pay to the officer in charge of the Custom-house at the port of all dues, whether customs-duties, warehouse-dues, rent or other lawful charges which shall be demandable on the said goods, or on account of penalties incurred in respect to them, within

from the date of this Bond, or within such further time as the Chief Customs-authority of shall allow in that behalf, together with interest on every such sum at the rate of six per cent. per annum from the date of demand thereof being made in writing by the said officer in charge of the Custom-house;

And if, within the term so fixed or enlarged, the said goods, or any portion thereof, having been removed from the said warehouse for home consumption or re-exportation by sea, the full amount of all customs-duties, warehouse-dues, rent and other lawful charges, penalties and interest demandable as aforesaid shall have been first paid on the whole of the said goods;

This obligation shall be void.

Otherwise, and on breach or failure in the performance of any part of this condition, the same shall be in full force.

(*date*)

(*Signed*) (

B

FORM OF BONDED WAREHOUSE WARRANT.

(*See section 96.*)

I do hereby certify that have deposited in the warehouse of the undermentioned goods , which goods, the engage on demand, after payment of rent and incidental charges and Government dues or customs chargeable thereon, to deliver to the said or their assigns, or to the holder of this warrant to whom it may be transferred by endorsement.

C

FORM OF BOND FOR THE REMOVAL OF SPIRIT FROM A LICENSED DISTILLERY.

(*See sections 144 and 152.*)

We,

are jointly and severally bound to Her Majesty's Secretary of State for India in Council in the sum of Government rupees to be paid to the said Secretary of State in Council, for which payment we jointly and severally bind ourselves and our legal representatives.

Dated this day of 18 .

(*Signed*) ( )

(*Schedule.—Part II.—Forms.*)

The above bounden being indebted to Her Majesty's Secretary of State for India in Council in the sum of Government rupees , being the amount of duty payable at the rate of rupees per imperial gallon London proof, for gallons of (*or* for gallons of proof spirit used in the preparation of dozens of bottles, *or* gallons of cordials and liquors, as specified in the annexed schedule) manufactured at which the said have been allowed to remove thence for exportation by sea, subject to the provisions of the Sea Customs Act, 1878, without having paid such duty.

The condition of this obligation is that, if the above bounden , or their legal representatives, shall, at the expiration of four calendar months from the date of this obligation, pay or cause to be paid to the said Secretary of State in Council duty at the rate of rupee per imperial gallon of proof spirit for all or any portion of the above-mentioned which shall not have been then exported by sea to a foreign port subject to the aforesaid provisions (of which exportation, if any, due proof shall be given), or passed for local consumption on payment of duty, then this bond shall be void; otherwise the same shall remain in full force.

Signed in the presence of

Place

Date

If the bond be for cordials and other liquors under section 152 add—Schedule.

Description of cordials and liquors.	Quantity in bottles or gallons.	Quantity of proof spirit.
1	2	3

THE INDIAN ARMS ACT, 1878.

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THE FIRST SCHEDULE.—ENACTMENTS REPEALED.
THE SECOND SCHEDULE. [*Repealed.*]

ACT No. XI OF 1878.[1]

[*15th March 1878.*]

An Act to consolidate and amend the law relating to Arms, Ammunition and Military Stores.

WHEREAS it is expedient to consolidate and amend the law relating to arms, ammunition and military stores; It is hereby enacted as follows:—

I.—Preliminary.

Short title. Local extent.

1. This Act may be called the Indian Arms Act, 1878; and it extends to the whole of British India.[2]

Savings.

But nothing herein contained shall apply to—

(*a*) arms, ammunition or military stores on board any sea-going vessel and forming part of her ordinary armament or equipment, or

(*b*) the manufacture, conversion, sale, import, export, transport, bearing or possession of arms, ammunition or military stores by order of the Government, or by a public servant or a volunteer enrolled

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[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1877, Pt. V, p. 650; for discussions in Council, *see ibid*, 1877, Supplement, pp. 3016 and 3030; *ibid*, 1878, Supplement, pp. 435 and 453.

This Act has been declared in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (1) and Sch. I (Bur. Code); and in the Santhál Parganas, *see* the Santhál Parganas' Settlement Regulation (III of 1872) as amended by the Santhál Parganas' Justice and Laws Regulation, 1899 (III of 1899), s. 3 (Ben. Code).

It has been extended under s. 10 (1) of the Burma Laws Act, 1898 (XIII of 1898), to the notified areas of Taunggyi in the State of Yawnghwe, Lashio in the State of North Hsenwi and Loilem in the State of Laikha and to the Civil Station of Loimwe in the State of Kengtung, and under s. 12 (1) (*c*) of that Act the officers who are to perform the duties of a Magistrate under the Act have been notified, *see* Burma Gazette, 1908, Pt. I, p. 455.

It has been declared in force in the Angul District, by notification under s. 5 of the Angul District Regulation, 1894 (I of 1894), Ben. Code, *see* Calcutta Gazette, 1900, Pt. I, p. 1237.

It has been declared by notification under s. 3(*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), General Acts, Vol. II, to be in force in the Districts of Hazáribágh, Lohárdaga and Mánbhum, and in Pargana Dhálbhum and the Kolhán in the District of Singbhum—*see* Gazette of India, 1881, Pt. I, p. 504. The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894; Lohárdaga is now called the Ranchi District, Cal. Gazette, 1899, Pt. I, p. 44.

It has been extended, by notification under s. 5 of the last-mentioned Act, to British Baluchistan, with certain exceptions, *see* Gazette of India, 1895, Pt. II, p. 921.

As to the trial in a Presidency-town of offences against the Act, *see* the Code of Criminal Procedure, 1898 (Act V of 1898), s. 184, General Acts, Vol. V.

A license granted under the Indian Explosives Act, 1884 (IV of 1884), for the manufacture, possession, sale, transport or importation of an explosive may be given the effect of a like license granted under the Indian Arms Act, 1878 (XI of 1878), *see* Act IV of 1884, s. 15, printed, General Acts, Vol. III.

As to the possession, manufacture and export of arms, ammunition and gunpowder in the Chittagong Hill Tracts, *see* the Chittagong Hill Tracts Regulation, 1900 (I of 1900), ss. 11 and 12, Ben. Code.

[2] As to definition of "British India," *see* the General Clauses Act, 1897 (X of 1897), s. 1 (7), General Acts, Vol. IV.

XX of 1869. under the Indian Volunteers Act, 1869,[1] in the course of his duty as such public servant or volunteer.

Commencement. **2.** This Act shall come into force on such day[2] as the Governor General in Council by notification in the Gazette of India appoints.

Repeal of enactments. **3.** On and from that day the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified in the third column of the said schedule. But all authorities and permissions given, licenses and exemptions granted, orders and appointments made, notifications published, and rules, conditions and forms prescribed, under any enactment hereby repealed, shall be deemed to be respectively given, granted, made, published and prescribed under this Act.

And all such authorities, permissions, licenses and exemptions shall, except as otherwise provided by this Act, continue in force for the periods for which they may have been given or granted respectively, or, where no such period is expressly fixed, for one year from the date[2] on which this Act comes into force, and shall then cease to have effect.

Interpretation-clause. **4.** In this Act, unless there be something repugnant in the subject or context,—

"cannon" includes also all howitzers, mortars, wall-pieces, mitrailleuses and other ordnance and machine-guns, all parts of the same, and all carriages, platforms and appliances for mounting, transporting and serving the same:

"arms" includes fire-arms, bayonets, swords, daggers, spears, spear-heads and bows and arrows, also cannon and parts of arms, and machinery for manufacturing arms:

"ammunition" includes also all articles specially designed for torpedo service and submarine mining, rockets, gun-cotton, dynamite, lithofracteur and other explosive or fulminating material, gun-flints, gun-wads, percussion-caps, fuses and friction-tubes, all parts of ammunition and all machinery for manufacturing ammunition, but does not include lead, sulphur or saltpetre:

"military stores," in any section of this Act as applied to any part of British India, means any military stores to which the Governor General in Council may from time to time, by notification in the Gazette of India, specially extend such section in such part,[3] and includes also all lead, sulphur, saltpetre and other material to which the Governor General in Council may from time to time so extend such section:

"license" means a license granted under this Act, and "licensed" means holding such license.

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[1] *Supra.*

[2] Act XI of 1878 came into force on the 1st October 1878—*see* Notification No. 1169, dated 27th June 1878, Gazette of India, 1878, Pt. I, p. 389.

[3] Bird shot and bullets in excess of certain quantities have, in exercise of this power, been declared to be military stores, *see* Notification No. 734, dated 19th April 1894, Gazette of India, 1894, Pt. I, p. 206.

(*II.—Manufacture, Conversion and Sale. III.—Import, Export and Transport.*)

II.—Manufacture, Conversion and Sale.

Unlicensed manufacture, conversion and sale prohibited.

5. No person shall manufacture, convert or sell, or keep, offer or expose for sale, any arms, ammunition or military stores, except under a license and in the manner and to the extent permitted thereby.

Nothing herein contained shall prevent any person from selling any arms or ammunition which he lawfully possesses for his own private use to any person who is not by any enactment for the time being in force prohibited from possessing the same; but every person so selling arms or ammunition to any person other than a person entitled to possess the same by reason of an exemption under section 27 of this Act shall, without unnecessary delay, give to the Magistrate of the district, or to the officer in charge of the nearest police-station, notice of the sale and of the purchaser's name and address.

III.—Import, Export and Transport.

Unlicensed importation and exportation prohibited.

6. No person shall bring or take by sea [1] or by land into or out of British India any arms, ammunition [1] or military stores except under a license and in the manner and to the extent permitted by such license.

Importation and exportation of arms and ammunition for private use.

Nothing in the first clause of this section extends to arms (other than cannon) or ammunition imported or exported in reasonable quantities for his own private use by any person lawfully entitled to possess such arms or ammunition; but the Collector of Customs or any other officer empowered by the Local Government in this behalf by name or in virtue of his office may at any time detain such arms or ammunition until he receives the orders of the Local Government thereon.

Explanation.—Arms, ammunition and military stores taken from one part of British India to another by sea or across intervening territory not being part of British India, are taken out of and brought into British India, within the meaning of this section.

Sanction of Local Government required to warehousing of arms, etc.

7. Notwithstanding anything contained in the Sea Customs Act, 1878,[2] VIII of 1878. no arms, ammunition or military stores shall be deposited in any warehouse licensed under section 16 of that Act without the sanction of the Local Government.

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[1] Arms, ammunition and military stores brought into an Indian port and declared under manifest to be consignments to another port and not transhipped, have been exempted from the operation of s. 6, *see* notifications issued in 1879, 1880 and 1882, Gazette of India, 1879, 1880 and 1882, Pt. I, pp. 580, 49 and 129, respectively.

Gun-wads, wire cartridges and bullets have been excluded from the operation of s. 6, *see* Notification No. 591, dated 29th April 1896, Gazette of India, 1896, Pt. I, p. 299.

As to the authority of Magistrates, Justices of the Peace or police-officers in Ajmer-Merwara to detain arms and ammunition, *see* Aj. R. and O.

[2] *Supra.*

(*III.—Import, Export and Transport. IV.—Going armed and possessing Arms, etc.*)

8. [*Levy of duties on arms, etc., imported by sea.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

9. [*Power to impose duty on imports by land.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

Power to prohibit transport.

10. The Governor General in Council may, from time to time, by notification in the Gazette of India,—

(*a*) regulate or prohibit the transport of any description of arms, ammunition or military stores over the whole of British India or any part thereof, either altogether or except under a license and to the extent in the manner permitted by such license, and

(*b*) cancel any such notification.

Transhipment of arms.

Explanation.—Arms, ammunition or military stores transhipped at a port in British India are transported within the meaning of this section.

Power to establish searching stations.

11. The Local Government, with the previous sanction of the Governor General in Council, may, at any places along the boundary-line between British India and foreign territory, and at such distance within such line as it deems expedient, establish searching-posts at which all vessels, carts and baggage-animals, and all boxes, bales and packages in transit, may be stopped and searched for arms, ammunition and military stores by any officer empowered by such Government in this behalf by name or in virtue of his office.

Arrest of persons conveying arms, etc., under suspicious circumstances.

12. When any person is found carrying or conveying any arms, ammunition or military stores, whether covered by a license or not, in such manner or under such circumstances as to afford just grounds of suspicion that the same are being carried by him with intent to use them, or that the same may be used, for any unlawful purpose, any person may without warrant apprehend him and take such arms, ammunition or military stores from him.

Procedure where arrest made by person not Magistrate or Police Officer.

Any person so apprehended, and any arms, ammunition or military stores so taken by a person not being a Magistrate or Police-officer, shall be delivered over as soon as possible to a Police-officer.

All persons apprehended by, or delivered to, a Police-officer, and all arms and ammunition seized by or delivered to any such officer under this section, shall be taken without unnecessary delay before a Magistrate.

IV.—Going armed and possessing Arms, etc.

Prohibition of going armed without license.

13. No person shall go armed with any arms except under a license and to the extent and in the manner permitted thereby.

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[1]So much of Home Department Notification No. 2536, dated 31st December 1879, as exempts the Mahal of Angul from the operation of these sections was cancelled by Notification No. 1431, dated 30th June 1899, Gazette of India, 1899, Pt. I, p. 615.

This section and section 14 have been extended under ss. 5 and 5A of the Scheduled Districts Act, 1874 (XIV of 1874), to certain districts in British Baluchistan—*see* Gazette of India, 1903, Pt. II, p. 53.

Any person so going armed without a license or in contravention of its provisions may be disarmed by any Magistrate, Police-officer or other person empowered by the Local Government in this behalf by name or by virtue of his office.

Unlicensed possession of fire-arms, etc.

[1]14. No person shall have in his possession or under his control any cannon or fire-arms, or any ammunition or military stores, except under a license and in the manner and to the extent permitted thereby.

[2] * * * * *

Possession of arms of any description without license prohibited in certain places.

15. In any place to which section 32, clause 2, of Act No. XXXI of 1860[3] applies at the time this Act comes into force or to which the Local Government, with the previous sanction of the Governor General in Council, may by notification in the local official Gazette specially extend this section,[4] no person shall have in his possession any arms of any description, except under a license and in the manner and to the extent permitted thereby.[5]

Arms of which possession has become unlawful to be deposited at police-station.

16. Any person possessing arms, ammunition or military stores, the possession whereof by him has in consequence of the cancellation or expiry of a license or by the issue of a notification under section 15, become unlawful, shall deposit the same without unnecessary delay with the officer in charge of the nearest police-station.

If the owner of anything deposited under this section does not within three years from the date on which such thing is so deposited produce a license authorising him to possess the same and apply for delivery of the same, such thing shall be forfeited to Her Majesty.

V—Licenses.

Power to make rules as to licenses.

17. The Governor General in Council may from time to time, by notification in the Gazette of India, make rules[6] to determine the officers by whom the form in which, and the terms and conditions[7] on and subject to which, any license shall be granted ; and may by such rules among other matters—

(*a*) fix the period for which such license shall continue in force ;

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[1] *See* footnote on page 693.

[2] The last three paras. of s. 14 were repealed by the Repealing and Amending Act, 1891. (XII of 1891).

[3] Act XXXI of 1860 was repealed by s. 3 of this Act.

[4] The words from "no person" to the end of s. 15 and the whole of s. 16 have been extended by notification under ss. 5 and 5A of the Scheduled Districts Act, 1874 (XIV of 1874), to certain districts in British Baluchistan—*see* Gazette of India, 1902, Pt. II., p. 53.

[5] For rules under this section *see* Notification No. 518, dated 6th March 1879, Gazette of India, 1879, Pt. I, p. 141 ; *see* revised edition of the notification issued by the Home Department.

For notification declaring that holders of a license for a gun shall, when such gun is lost or stolen, give notice to the police, *see* Gazette of India, 1900, Pt. I, p. 462.

[6] For list of districts in the Punjab to which this section has been especially extended, *see* Punjab Government Gazette, 1900, Pt. I, p. 797.

[7] For conditions annexed to licenses to import arms, etc., into Aden, *see* Notification No. 1016, dated 26th May 1879, Gazette of India, 1879, Pt. I, p. 381; amended by Notification No. 3518, dated 19th November 1903, Gazette of India, 1903, Pt. I, p. 976. As regards Ajmer-Merwara, *see* Aj. R. and O.

(*b*) fix a fee payable by stamp or otherwise in respect of any such license granted in a place to which section 32, clause 2, of Act No. XXXI, of 1860[1] applies at the time this Act comes into force or in respect of any such license other than a license for possession granted in any other place ;

(*c*) direct that the holder of any such license other than a license for possession shall keep a record or account, in such form as the Local Government may prescribe, of anything done under such license, and exhibit such record or account when called upon by an officer of Government to do so ;

(*d*) empower any officer of Government to enter and inspect any premises in which arms, ammunition or military stores are manufactured or kept by any person holding a license of the description referred to in section 5 or section 6 ;

(*e*) direct that any such person shall exhibit the entire stock of arms, ammunition and military stores in his possession or under his control to any officer of Government so empowered ; and

(*f*) require the person holding any license or acting under any license to produce the same, and to produce or account for the arms, ammunition or military stores covered by the same when called upon by an officer of Government so to do.

Cancelling and suspension of license.

18. Any license may be cancelled or suspended—

(*a*) by the officer by whom the same was granted, or by any authority to which he may be subordinate, or by any Magistrate of a district, or Commissioner of Police in a presidency-town, within the local limits of whose jurisdiction the holder of such license may be, when, for reasons to be recorded in writing, such officer, authority, Magistrate or Commissioner deems it necessary for the security of the public peace to cancel or suspend such license ; or

(*b*) by any Judge or Magistrate before whom the holder of such license is convicted of an offence against this Act, or against the rules made under this Act ; and

the Local Government may at its discretion, by a notification in the local official Gazette, cancel or suspend all or any licenses throughout the whole or any portion of the territories under its administration.

VI.—Penalties.

For breach of sections 5, 6, 10, 13 to 17.

19.[2] Whoever commits any of the following offences (namely) :—

(*a*) manufactures, converts or sells, or keeps, offers or exposes for sale, any

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1 Act XXXI of 1860 was repealed by s. 3 of this Act.

2 Offences under this section are bailable, *see* Sch. II, Code of Criminal Procedure, 1898 (Act V of 1898), General Acts, Vol. V.

arms, ammunition or military stores in contravention of the provisions of section 5 ;

(*b*) fails to give notice as required by the same section ;

(*c*) imports or exports any arms, ammunition or military stores in contravention of the provisions of section 6 ;

(*d*) transports any arms, ammunition or military stores in contravention of a regulation or prohibition issued under section 10 ;

(*e*) goes armed in contravention of the provisions of section 13 ;

(*f*) has in his possession or under his control any arms, ammunition or military stores in contravention of the provisions of section 14 or section 15 ;

(*g*) intentionally makes any false entry in a record or account which, by a rule made under section 17, clause (*c*), he is required to keep ;

(*h*) intentionally fails to exhibit anything which, by a rule made under section 17, clause (*e*), he is required to exhibit ; or

(*i*) fails to deposit arms, ammunition or military stores, as required by section 14 or section 16 ;

shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

For secret breaches of sections 5, 6, 10, 14 and 15.

20. Whoever does any act mentioned in clause (*a*), (*c*), (*d*) or (*f*) of section 19, in such manner as to indicate an intention that such act may not be known to any public servant as defined in the Indian Penal Code,[1] or to any person employed upon a railway or to the servant of any public carrier, XLV of 1860.

For concealing arms, etc.

and whoever, on any search being made under section 25, conceals or attempts to conceal any arms, ammunition or military stores,

shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

For breach of license.

21. Whoever, in violation of a condition subject to which a license has been granted, does or omits to do any act shall, when the doing or omitting to do such act is not punishable under section 19 or section 20, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

For knowingly purchasing arms, etc., from unlicensed person.

22. Whoever knowingly purchases any arms, ammunition or military stores from any person not licensed or authorized under the proviso to section 5 to sell the same ; or

[1] General Acts, Vol. I.

delivers any arms, ammunition or military stores into the possession of any person without previously ascertaining that such person is legally authorized to possess the same,

For delivering arms, etc., to person not authorised to possess them.

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Penalty for breach of rule.

23. Any person violating any rule made under this Act, and for the violation of which no penalty is provided by this Act, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Power to confiscate.

24. When any person is convicted of an offence punishable under this Act, committed by him in respect of any arms, ammunition or military stores, it shall be in the discretion of the convicting Court or Magistrate further to direct that the whole or any portion of such arms, ammunition or military stores, and any vessel, cart or baggage-animal used to convey the same, and any box, package or bale in which the same may have been concealed, together with the other contents of such box, package or bale, shall be confiscated.

VII.—Miscellaneous.

Search and seizure by Magistrate.

25. Whenever any Magistrate has reason to believe that any person residing within the local limits of his jurisdiction has in his possession any arms, ammunition or military stores for any unlawful purpose,

or that such person cannot be left in the possession of any such arms, ammunition or military stores without danger to the public peace,

such Magistrate, having first recorded the grounds of his belief, may cause a search to be made of the house or premises occupied by such person or in which such Magistrate has reason to believe such arms, ammunition or military stores are or is to be found, and may seize and detain the same, although covered by a license, in safe custody for such time as he thinks necessary.

The search in such case shall be conducted by, or in the presence of, a Magistrate, or by, or in the presence of, some officer specially empowered[1] in this behalf by name or in virtue of his office by the Local Government.

Seizure and detention by Local Government.

26. The Local Government may at any time order or cause to be seized any arms, ammunition or military stores in the possession of any person, notwithstanding that such person is licensed to possess the same, and may detain the same for such time as it thinks necessary for the public safety.

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[1] For notification empowering Deputy Superintendents of Police in Burma to conduct searches, *see* Burma Gazette, 1908, Pt. I, p. 134.

(*VII.—Miscellaneous.*)

Power to exempt.

27. The Governor General in Council may from time to time, by notification[1] published in the Gazette of India,—

(*a*) exempt any person by name or in virtue of his office, or any class of persons, or exclude any description of arms or ammunition, or withdraw any part of British India, from the operation of any prohibition or direction contained in this Act; and

(*b*) [2]cancel any such notification, and again subject the persons or things or the part of British India comprised therein to the operation of such prohibition or direction.[3]

Information to be given regarding offences.

28. Every person aware of the commission of any offence punishable under this Act shall in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information of the same to the nearest Police-officer or Magistrate, and

every person employed upon any railway or by any public carrier shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information to the nearest Police-officer regarding any box, package or bale in transit which he may have reason to suspect contains arms,

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[1]For the notification issued under this section, together with rules by the Governor General under ss. 4, 9, 11 of the Act, *see* No. 518, dated 6th March 1879, Gazette of India, 1879, Pt. I, p. 141; this notification has been amended from time to time; *see* Gen. R. & O.; *see* also Notification No. 877, *ibid*, 1899, Pt. I, p. 285, and as to the exemption of all Inspectors and Deputy Inspectors in the Punjab under s. 3(*ii*) of this notification, *see* Punjab Gazette, 1900, Pt. I, p. 857.

A revised edition of this notification corrected up to 1st May 1901, has been published by the Home Department of the Government of India.

For order exempting residents of Pondicherry, being Europeans, from payment of import duty on guns, when holding passports from their own authorities, *see* Notification No. 2257, Gazette of India, 1879, Pt. I, p. 782.

For order exempting Gurkha pensioners from all prohibitions and directions in respect of kukris, *see* Notification No. 1201, Gazette of India, 1891, Pt. I, p. 430.

For order exempting masonic and theatrical and fancy dress swords, provided they are useless for offensive or defensive purposes, *see* Gazette of India, 1900, Pt. I, p. 201.

For order exempting swords carried by tahsildars or peons employed in the collection, custody or remittance to treasuries of water-rates in the Shahabad, Patna and Gaya Districts of Bengal, *see* Gazette of India, 1903, Pt. I, p. 81.

For order exempting toy cannon weighing less than 56lbs. and of a certain bore, *see ibid*, p. 82.

For order exempting single barrel rifles of ·303 bore belonging to British officers, staff sergeants, warrant officers, Instructors of Volunteers and members of Volunteer Corps, *see ibid*, p. 333.

For order withdrawing part of British India from operation of any prohibition or direction contained in the Act, *see* Notification No. 496, dated April 14, 1893, Gazette of India, 1893, Pt. I, p. 201.

For order withdrawing Ajmer from the operation of the prohibitions contained in ss. 13 and 14 except so far as they relate to cannon, *see* Aj. R. and O.

For notification as to disarmament of the Peshawar and certain other frontier districts, *see* Gazette of India, 1899, Pt. I, p. 285.

[2]*See*, for instance, the partial cancellation of Notification No. 2536 of 31st December 1879, by Notification No. 1431, Gazette of India, 1899, Pt. I, p. 614.

[3]For notification declaring arms, etc., brought into an Indian port and declared under manifest to be consignments with transhipment to any port on the seaboard of the Persian Gulf, to be liable to the prohibitions and directions contained in s. 6, *see* No. 967 P., dated 13th April 1900, Gazette of India, 1900, Pt. I, p. 223. For notification as to proviso in respect of small parcels, *see ibid*, 1902, Pt. I, p. 563.

ammunition or military stores in respect of which an offence against this Act has been or is being committed.

Sanction required to certain proceedings under section 19, clause (*f*).

29. Where an offence punishable under section 19, clause (*f*), has been committed within three months from the date[1] on which this Act comes into force in any province, district or place to which section 32, clause 2, of Act XXXI of 1860[2] applies at such date, or where such an offence has been committed in any part of British India not being such a district, province or place, no proceedings shall be instituted against any person in respect of such offence without the previous sanction of the Magistrate of the district or, in a presidency-town, of the Commissioner of Police.

Searches in the case of offences against section 19, clause (*f*), how conducted.

30. Where a search is to be made under the Code of Criminal Procedure or the Presidency Magistrates Act, 1877,[3] in the course of any proceedings instituted in respect of an offence punishable under section 19, clause (*f*), such search shall, notwithstanding anything contained in the said Code or Act,[3] be made in the presence of some officer specially appointed by name or in virtue of his office by the Local Government in this behalf, and not otherwise.

Operation of other laws not barred.

31. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under such other law to any higher punishment or penalty than that provided by this Act: Provided that no person shall be punished twice for the same offence.

Power to take census of fire-arms.

32. The Local Government may from time to time, by notification in the local official Gazette, direct a census to be taken of all fire-arms in any local area, and empower any person by name or in virtue of his office to take such census.

On the issue of any such notification, all persons possessing any such arms in such area shall furnish to the person so empowered such information as he may require in reference thereto, and shall produce such arms to him if he so requires.

Any person refusing or neglecting to produce any such arms when so required shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Notice and limitation of proceedings.

33. No proceeding other than a suit shall be commenced against any person for anything done in pursuance of this Act, without having given him at least one month's previous notice in writing of the intended proceeding and of the cause thereof, nor after the expiration of three months from the accrual of such cause.

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1 The 1st October 1878.

2 Act XXXI of 1860 was repealed by s. 3 of this Act.

3 For the references to Act X of 1872 and the Presidency Magistrates Act, 1877 (IV of 1877), read now Act V of 1898, General Acts, Vol. V.

(*The First Schedule.*)

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(*See section 3.*)

Number and year.	Title.	Extent of repeal.
XVIII of 1841	An Act for consolidating and amending the enactments concerning the exportation of Military Stores.	So much as has not been repealed.
XXX of 1854	An Act to provide for the levy of duties of Customs in the Arracan, Pegu, Martaban and Tenasserim Provinces.	In the preamble, the words "and that the exportation of munitions of war from any of these Provinces into foreign States should be prohbited." Section 11. [1]
XXXI of 1860	An Act relating to the manufacture, importation and sale of Arms and Ammunition and for regulating the right to keep and use the same, and to give power of disarming in certain cases.	So much as has not been repealed.
VI of 1866	An Act to continue Act No. XXXI of 1860 (relating to the manufacture, importation and sale of Arms and Ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases) and for other purposes.	The whole.
III of 1872	The Santhal Parganas' Settlement Regulation .	So much of the schedule[2] as relates to Act XXXI of 1860 and Act VI of 1866.
[3]IX of 1874	The Arakan Hills District Laws Regulation, 1874.	So much of the schedule as relates to Act XVIII of 1841.
[4]XV of 1874	An Act for declaring the local extent of certain enactments and for other purposes.	So much of the first schedule as relates to Act XVIII of 1841.

THE SECOND SCHEDULE.

ARMS, ETC., LIABLE TO DUTY.

[*Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*]

[1] The rest of Act XXX of 1854 was repealed by the Upper Burma Laws Act, 1886 (XX of 1886), s. 5.

[2] A new schedule has since been substituted for the schedule here mentioned—Ben. Code.

[3] Bur. Code.

[4] *Supra*.

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Warehouse and warehousing, *see* Indian Arms Act, 1878; Sea Customs Act, 1878.
Warranty, *see* Indian Contract Act, 1872.

Weights, *see* Indian Weights and Measures of Capacity Act, 1871.
Wharves, *see* Sea Customs Act, 1878.
Who are competent to contract, *see* Indian Contract Act, 1872.
„ „ „ „ be witnesses, *see* Indian Evidence Act, 1872.
Wife, *see* Married women.
Wills of Hindus, Jainas, Sikhs and Buddhists, *see* Hindu Wills Act, 1870.
Winding-up, *see* Presidency Banks Act, 1876.
Witnesses, *see* Indian Evidence Act, 1872.
Workhouses, *see* European Vagrancy Act, 1874.

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